Guidance for Shutdown Furloughs

U.S. Office of Personnel Management

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Overview

The U.S. Office of Personnel Management (OPM) has prepared human resources guidance for agencies and employees on shutdown furloughs (also called emergency furloughs). A shutdown furlough occurs when there is a lapse in annual appropriations. Shutdown furloughs can occur at the beginning of a fiscal year, if no funds have been appropriated for that year, or upon expiration of a continuing resolution, if a new continuing resolution or appropriations law is not passed.

In a shutdown furlough, an affected agency would have to shut down any activities funded by annual appropriations that are not excepted by law. Typically, an agency will have very little to no lead time to plan and implement a shutdown furlough.

This guidance has been updated to incorporate the requirements of the Government Employee Fair Treatment Act of 2019 (Public Law 116-1, January 16, 2019). That Act amended section 1341 of title 31, United States Code, to provide retroactive pay for Federal employees affected by a lapse in appropriations as soon as possible after the lapse in appropriations ends, regardless of scheduled pay dates, and subject to the enactment of appropriations Acts ending the lapse.

NOTE: This guidance applies to activities that are funded by annual appropriations. Some agency functions have alternative funding sources and, as a result, are not directly affected by a lapse in annual appropriations. Employees performing those functions will generally continue to be governed by the normal pay, leave, and other civil service rules. Agencies should consult with their legal counsel if they have further questions concerning this distinction. Employees should consult with their Human Resources office.

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Frequently Asked Questions

Note: Certain Q's and A's in this document, "Guidance for Shutdown Furloughs," assume coverage under provisions of law or regulation specified in the given Q and A. To the extent that a particular employee is not covered by those specified provisions, the guidance in the Q and A may not be applicable.

A. General

1. **What is a furlough?**

   A. A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

2. **What is a shutdown furlough and why is a shutdown furlough necessary?**

   A. In the event that funds are not available through an appropriations law or continuing resolution, a "shutdown" furlough occurs. A shutdown furlough is necessary when an agency no longer has the necessary funds to operate and must shut down those activities which are not excepted pursuant to the Antideficiency Act (31 U.S.C. 1341-1342). (See guidance from the Office of Management and Budget (OMB) and the Department of Justice (DOJ) for further information on appropriation matters.)

3. **May an employee use government equipment during a shutdown furlough?**

   A. Yes, an employee may use government equipment for reasons such as:

   - Accessing their personal employee records;
   - Completing a background investigation;
   - Checking the status of the shutdown furlough;
   - Checking for any Reduction in Force (RIF) updates, or providing additional RIF information;
   - Updating personal contact information;
   - Completing or submitting Federal Employee Health Benefit changes; and
   - Completing or submitting a retirement application.

B. Employee Coverage

1. Who are "excepted" employees?

A. In the context of shutdown furloughs, the term "excepted" is used broadly to refer to employees whose work is funded through annual appropriations but who are not furloughed because they are performing tasks that, by law, are allowed to continue during a lapse in appropriations. Those tasks are referred to as "excepted work." Such tasks may include emergency work involving the safety of human life or the protection of property or the performance of certain other types of "excepted work activities" as defined in DOJ and OMB guidance.

In addition to emergency work involving the safety of human life or the protection of property, work performed "by necessary implication" as described in DOJ and OMB guidance is considered to be excepted work. For example, an employee's performance of authorized orderly shutdown activities (as described in OMB and DOJ guidance) is considered excepted work. In addition, work necessary to implement a funded function, where the suspension of such work during the lapse would prevent or significantly damage the execution of the terms of the applicable statutory authorization or appropriation is considered "excepted work" (e.g., cutting the checks for a benefit program for which funding remains available during the lapse and from which the law requires payments to be made).

Agency legal counsel, working with senior agency managers, determine which employees are designated to be handling "excepted" and "non-excepted" functions. (See Shutdown Furlough Guidance for copies of the applicable OMB and DOJ issuances, which provide guidance on the application of these criteria.)

An employee may be required to perform excepted work activities during part of a lapse period and furloughed for the rest of the time. The use of paid leave is also permissible in certain situations, if taken pursuant to 31 U.S.C. 1341(c)(3). (See Questions D.1a. and F.2. for more information.)

(Note: Presidential appointees who are not covered by the leave system in 5 U.S.C. chapter 63 are not "excepted" as discussed above. However, they are not subject to furlough because their salary is an obligation incurred by the year, without consideration of hours of duty required, so they cannot be placed in a nonduty, nonpay status.)

1a. To the extent that agencies need employees to be available to help process Form 931s, Request for Wage and Separation Information, or other requests from State unemployment offices, can agencies except employees who are furloughed due to the lapse in annual appropriations to assist with this?

A. Yes. Agencies can except employees who have previously been furloughed due to the lapse in annual appropriations in order to come back into work to assist with processing Form 931s and other related unemployment issues. It is up to the discretion of the agency to identify which employees and the number of employees that are needed to be called back into work for this purpose.

2. **Are all employees who qualify as "emergency employees" for the purpose of weather emergencies considered to be "excepted employees" for the purpose of a shutdown furlough?**

   A. Not necessarily. "Emergency employees" are those employees who must report for work in emergency situations—e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or which require agencies to close all or part of their activities. Emergency employees are not automatically deemed excepted employees for purposes of shutdown furloughs. Each agency must determine which employees are excepted employees based on the law.

3. **Who are "exempt" employees?**

   A. Employees are "exempt" from furlough if they are not affected by a lapse in appropriations. This includes employees whose functions are not funded by annually appropriated funds. Employees performing those functions will generally continue to be governed by the normal pay, leave, and other civil service rules.

4. **What about employees whose work is neither "excepted" nor "exempt"?**

   A. Employees whose work is funded through annual appropriations but is not designated as excepted work are barred from working during a shutdown, other than to perform minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities. These employees will be furloughed.

5. **How will employees be notified whether they have been designated to be handling "excepted" functions or not?**

   A. Each agency will determine the method and timing of notifying employees of whether their work has been determined to be excepted.

6. **Why are leave-exempt Presidential appointees not subject to furlough?**

   A. Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent

formal leave system, are not subject to furlough. An exemption from the chapter 63 leave system may be based on 5 U.S.C. 6301(2)(x) or (xi). (See also OPM regulations at 5 CFR 630.211.) These leave-exempt Presidential appointees are not subject to furloughs because they are considered to be entitled to the pay of their offices solely by virtue of their status as an officer, rather than by virtue of the hours they work. In other words, their compensation is attached to their office, and, by necessary implication of the President's authority to appoint such employees, their service under such an appointment creates budgetary obligations without the need for additional statutory authorization. Based on opinions of the Office of Legal Counsel, Department of Justice, the Antideficiency Act prohibition on creating a budgetary obligation before an appropriation is made is not applicable if the obligation is otherwise "authorized by law." (See 31 U.S.C. 1341 and 36 Op. O.L.C. 1, April 8, 2011.)

A leave-exempt Presidential appointee cannot be placed on nonduty status. Thus, the appointee's pay cannot be reduced based on placement in nonduty status, including via the mechanism of a furlough. As explained above, a leave-exempt Presidential appointee is entitled to the established pay of the position based on the holding of the office, not on the hours of duty.

Presidential appointees who are covered by the chapter 63 leave system are not considered to be entitled to pay based solely on their status as officers; thus, these individuals are subject to furlough in the same manner as other Federal employees. (See 5 U.S.C. 5508.) Any Presidential appointee who is a member of the Senior Executive Service (SES) or in a senior level (SL/ST) position paid under 5 U.S.C. 5376 is not exempt from the chapter 63 leave system (unless specifically designated for exemption under 5 U.S.C. 6301(2)(xi) and 5 CFR 630.211). All SES and SL/ST employees covered by the chapter 63 leave system are subject to furlough on the same basis as other employees. (The furlough of career SES members is subject to the procedures in 5 CFR 359, subpart H, and the furlough of SL/ST employees is subject to the procedures in 5 CFR 752, subpart D, or 5 CFR part 351, as applicable.)

While employees may be subject to furlough, the applicable procedures depend on the type of employee in question. For example, all Presidential appointees are excluded from the adverse action procedures in 5 U.S.C. chapter 75, based on 5 U.S.C. 7511(b)(1) and (3). In addition, Presidential appointees subject to Senate confirmation are excluded from reduction in force procedures, based on 5 CFR 351.202(b). If a Presidential appointee is subject to furlough but not subject to adverse action or reduction in force procedures, the agency should follow any administrative procedures required by any applicable internal personnel policies.

Note: A former career Senior Executive Service (SES) appointee who receives a

Presidential appointment that would normally convey an exemption from the leave system may be eligible to elect to retain SES leave benefits under 5 U.S.C. 3392(c). If SES leave benefits are so elected, such a Presidential appointee would be subject to furlough under 5 CFR 359, subpart H.

C. Working, and Work Schedules, During Furlough

1. **May an employee volunteer to do his or her job on a nonpay basis during a shutdown furlough?**

   A. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an employee. (See 31 U.S.C. 1342.)

2. **What happens to employees scheduled for training during a shutdown furlough?**

   A. Employees who are neither excepted nor exempt and are scheduled for training during a shutdown furlough must be placed in a furlough status and ordered not to attend the scheduled training.

3. **May employees take other jobs while on furlough?**

   A. While on furlough, an individual remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct (the standards), at 5 CFR part 2635). In addition, there are specific statutes which prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult their agency ethics official to learn if there are any agency-specific supplemental rules governing the employee.

4. **If an employee receives a temporary appointment in another agency while furloughed, what happens to his/her benefits (e.g., retirement, health benefits, life insurance, leave)?**

   A. Retirement, health benefits, and life insurance are handled as if the employee had actually transferred to the new agency. Leave balances are transferred as if the employee had actually transferred. (See Comptroller General opinion B-167975, September 1, 1970.)

5. **How should an agency determine the number of furlough hours for alternative work schedule (AWS) employees during a shutdown furlough? Can an employee**

reschedule a non-workday that occurred during the furlough?

A. Employees are furloughed based on the number of hours they are scheduled to work on the days for which there is a shutdown furlough. There are two types of alternative work schedules —a flexible work schedule and a compressed work schedule. Normally, once a compressed work schedule is established, the days and hours are fixed and cannot be changed; however, changes in an employee's flexible work schedule may be made under agency policies and collective bargaining agreements (if applicable). For example, in appropriate circumstances, the AWS day off for an employee with a flexible work schedule may be changed to a different day in the same biweekly pay period.

Once a lapse in appropriations begins, a furloughed employee must not be permitted to reschedule an AWS day off under a flexible work schedule that was scheduled to occur during the lapse—except when rescheduling is related directly to the timing of the employee's orderly shutdown activities. Thus, if the lapse ends in the middle of a pay period, a furloughed employee may not move an AWS day off that was scheduled to occur during the portion of the pay period covered by the lapse.

However, if a furloughed employee's AWS day off was scheduled to occur during the portion of the pay period that falls after the lapse in appropriations has ended, it may be possible for the employee to move the AWS day off to a later date in that same pay period. For example, an employee may want to move an AWS day off scheduled to occur after the lapse has ended to a later date because the employee needs more time to reestablish child- care arrangements after the lapse ended. Any changes to an employee's AWS day off are subject to agency policies and collective bargaining agreements, as applicable.

After the lapse in appropriations has ended, retroactive pay at the standard rate of pay is based on each employee's established (standard) schedule. No retroactive pay is provided for an AWS day off. An employee cannot move an AWS day off in order to obtain retroactive pay for a normal day off under the employee's established schedule. (See section D (Pay) for additional information on retroactive pay after a lapse of appropriation ends.)

5a. What happens to employees on detail during a shutdown furlough?

A. Detailed employees remain officially assigned to their permanent position of record during the detail. During a shutdown furlough, each agency will determine the status of their employees on detail, either within the agency or to another agency. This determination is driven by the funding source of the work performed by the detailed employees.

In the case of any detailee under an authorized non-reimbursable agreement whose permanent work the home agency designates as excepted and whose home agency agrees to continue the detail, the home and receiving agencies should carefully consult with one another about what, if any, activities are appropriate for the detailee to perform during a lapse. Any such activities must be consistent with the reasons why the home agency designated the employee's work as excepted. This communication is especially important in the event that the activities of the receiving agency are not subject to the lapse.

6. **How are personnel working for Federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA) treated in a shutdown furlough?**

A. The specific authority for furloughing personnel who are working under mobility agreements pursuant to the IPA, either inside the Federal Government or with other organizations, will depend upon the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- Personnel from non-Federal organizations on appointments to the Federal Government are subject to furlough in the same manner as other employees if the Federal agencies hosting them are paying their salaries and benefits.
- Personnel from non-Federal organizations on detail to Federal agencies may continue working and are not subject to furlough, provided that the non-Federal organizations are paying the total costs of their details.
- Personnel on detail to Federal agencies from non-Federal organizations that share part of the costs of the detail may continue to work if the Federal portion of the costs was previously obligated from amounts available at the time of the IPA mobility agreements. In the event that a shutdown furlough takes place during a time for which no funds are available, the assignment should be terminated.
- Personnel on detail to Federal agencies from non-Federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees because the Federal agency is covering the costs of the detail.

D. Pay

1. **Will employees performing excepted work be paid for performing such work**

during a shutdown furlough? If so, when will excepted employees receive such payments?

A. Yes. After the lapse in appropriations has ended, employees who were required to perform excepted work during the lapse will receive retroactive pay for those work periods. (See 31 U.S.C. 1341(c)(2).) Retroactive pay is provided at the employee's "standard rate of pay." If the retroactive pay cannot be provided on the normal pay date for the given pay period, it must be provided at the earliest date possible after the lapse ends.

(Note: Presidential appointees who are not covered by the leave system in 5 U.S.C. chapter 63 are not subject to furlough, but are also barred from receiving pay during a lapse in appropriations. These Presidential appointees will be paid after the lapse in appropriations has ended. See Question B.6.)

1a. How is the "standard rate of pay" computed for employees whose work is excepted?

A. Employees who perform excepted work during a lapse in appropriations must receive retroactive pay for that work at the employee's "standard rate of pay" (31 U.S.C. 1341(c)(2)). The "standard rate of pay" for excepted hours of work is the pay to which the employee normally is entitled for actual hours of work under the applicable pay rules. For example, if an excepted employee performs authorized overtime work beyond the normal requirements for his or her job, he/she will be paid for that actual authorized overtime work. All excepted hours of work are treated as time in a pay status for pay, leave, and benefit purposes.

Excepted employees who elect to use paid leave under 31 U.S.C. 1341(c)(3) to cover an authorized absence from work during a lapse in appropriations will receive pay for that leave under the normal leave rules when the lapse ends. (See Question F.2.) Consistent with the normal leave rules, an excepted employee may not use paid leave during periods when the employee is found to be absent without leave (AWOL). The standard rate of pay during AWOL periods is zero. If an otherwise excepted employee has an authorized absence from work during the lapse and elects not to use paid leave under 31 U.S.C. 1341(c)(3), the employee will be placed in furlough status during the authorized absence. The employee will be paid for the furlough time when the lapse ends as described in Questions D.3. and D.4. The employee will not be charged paid leave or other paid time off for authorized periods of absence from duty during the lapse, except as provided under 31 U.S.C. 1341(c)(3). (See Question F.2.)

2. May an employee who performs excepted work be permitted to earn premium pay

(e.g., overtime pay, Sunday premium pay, night pay, availability pay) during the furlough period?

A. Yes. An employee who performs excepted work and who meets the conditions for overtime pay, Sunday premium pay, night pay, availability pay, and other premium payments will be entitled to receive payment in accordance with applicable rules, subject to any relevant payment limitations, once the lapse ends. Premium pay may be earned during the lapse but cannot be paid until Congress passes and the President signs a new appropriation or continuing resolution.

3. **Will employees who are furloughed get paid?**

A. Yes. After the lapse in appropriations has ended, employees who were furloughed as the result of the lapse will receive retroactive pay for those furlough periods. (See 31 U.S.C. 1341(c)(2).) Retroactive pay will be provided on the earliest date possible after the lapse ends, regardless of scheduled pay dates. (See 31 U.S.C. 1341(c)(2).) If retroactive pay cannot be provided by the normal pay date for the given pay period, it will be provided as soon as possible thereafter. Retroactive pay is provided at the employee's "standard rate of pay." (See Question D.4. Note that retroactive pay may be zero if an employee was scheduled (before the lapse took effect) to be in a nonpay status during the period when the lapse was in effect.)

4. **How is the "standard rate of pay" computed for furloughed employees?**

A. For periods of time during which an employee was furloughed during the lapse in appropriations, the "standard rate of pay" is the pay the employee would have received for the furlough hours had the lapse in appropriations not occurred and had the employee performed work. Therefore—

- An employee is entitled to receive his or her rate of basic pay for the furlough time to the extent that he or she would have been in a basic pay status but for the lapse in appropriations. (See 31 U.S.C. 1341(c)(2).)
- An employee receives retroactive pay for furlough time without being charged paid leave or other paid time off, since a lapse in appropriations generally prevents the use of paid leave or other paid time off. (However, an excepted employee may seek approval of paid leave under 31 U.S.C. 1341(c)(3). See Questions D.1a and F.2.)
- All furlough hours for which retroactive pay is received are treated as time in a pay status for pay, leave, and benefit purposes. For example, for the purpose of applying General Schedule waiting periods associated with within-grade increases, the furlough time during the lapse in appropriations is treated as time

in pay status.

- A furloughed employee who, during the lapse in appropriations, had been regularly scheduled to perform overtime work or to perform work at night or during a period for which any other form of premium pay would otherwise be payable is entitled to receive overtime pay, night pay, or other premium pay as if the work had been performed.
- Allowances, differentials, and other payments otherwise payable on a regular basis (e.g., administratively uncontrollable overtime pay and law enforcement availability pay) must be paid as if the furloughed employee actually continued to work.
- All periods of time during which a furloughed employee would, but for the lapse in appropriations, have been in a pay status (including regularly scheduled overtime hours and standby duty) must be considered "hours of work" for pay administration purposes under the Fair Labor Standards Act.
- A furloughed employee is not entitled to retroactive pay for furlough periods if the employee had been previously scheduled (i.e., scheduled before the lapse) to be in nonpay status during those periods. For example, an employee may have scheduled leave without pay (LWOP) for an extended period or be in a suspension status (i.e., pay suspended based on an adverse action). In effect, those already-in-place periods of nonpay status override the furlough status. The "standard rate of pay" for such previously scheduled periods of nonpay status is zero. In addition, an employee who was directed to perform excepted work during a lapse in appropriations but failed to report to duty could have been placed in absent-without-leave (AWOL) status for missed work hours, in accordance with agency policy and procedures. For such an employee, the "standard rate of pay" for AWOL hours is also zero.

4a. Are intermittent employees entitled to retroactive pay following a lapse in appropriations?

A. Intermittent employees—i.e., employees without a regularly scheduled tour of duty (see 5 CFR 340.401)—may be furloughed during a lapse in appropriations. Intermittent employees are covered by the definition of "furlough" in the adverse action regulations at 5 CFR 752.402. Under 31 U.S.C. 1341(c)(2), an employee who is furloughed as the result of a lapse in appropriations must be paid for furlough periods that occurred during the lapse. After the lapse ends, retroactive pay is provided at the employee's "standard rate of pay." (See Question D.4.)

If an agency furloughs an intermittent employee, the agency must provide

retroactive pay at the employee's standard rate of pay for the period of the lapse. This should be based on an estimate of the hours the intermittent employee would have worked had the lapse not occurred. Agencies should use their best judgment to determine the hours the intermittent employee would have worked. They may use the employee's recent work history and/or any agency plans for the lapse period.

5. **Will employees receive a paycheck for hours worked prior to a lapse in appropriations?**

   A. Yes. Although the payroll for the last pay period before the lapse will be processed potentially during the lapse, the minimum number of payroll staff necessary for this process will be excepted for the minimum time required to issue the checks, including checks for the last pay period before the lapse. (See OMB M-96-01, Planning for Agency Operations (Nov. 9, 1995); and OMB, Bulletin No. 80-14, Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations (Aug. 28, 1980).)

6. **When an employee's pay is insufficient to permit all deductions to be made because a lapse in appropriations occurs in the middle of a pay period and the employee receives a partial paycheck, what is the order of withholding precedence?**

   A. Agencies will follow the guidance on the order of precedence for applying deductions from the pay of their civilian employees when gross pay is insufficient to cover all authorized deductions.

7. **If an employee's pay is insufficient to permit all deductions to be made because a lapse in appropriations occurs in the middle of a pay period and the employee receives a partial paycheck, will the amount of the deductions taken from the employee's partial paycheck be the same as normal?**

   A. Some deductions that are based on the amount of an employee's gross pay (or basic pay) will be reduced in size. For example, deductions for the Federal Employees Retirement System (FERS) Basic Benefit are a percentage of basic pay paid to an employee. Other deductions, such as health insurance premiums, may be a fixed dollar amount and will not be affected. Consequently, the amount of money an employee normally sees in their paycheck will be different than what they might expect.

8. **If an employee's pay is insufficient to permit deductions for health or other insurance premiums or deductions for flexible spending accounts because the**

employee receives a partial paycheck or no pay during a lapse in appropriations, will this affect the employee's enrollment or coverage in these benefit programs?

A. An employee's enrollment and coverage under such programs generally will not be affected if the employee is unable to make the required deductions for insurance and other benefits due to receiving a partial paycheck or no pay during a lapse of appropriations. The one exception is that if an employee is enrolled in a health care flexible spending account through FSAFEDS, they can't be reimbursed for eligible health care claims until they return to pay status and payroll deductions can be made. (See section H. Benefits for additional information on how missed insurance premiums and flexible spending account deductions will be paid after the lapse of appropriations ends.)

9. **If an employee receives a partial paycheck during a lapse in appropriations, may the employee's agency or payroll provider defer deductions for allotments previously designated by the employee to be taken from retroactive pay when the lapse of appropriations ends in order to provide the employee with a larger partial paycheck?**

   A. Any changes in an allotment amount or cancelation of an allotment that was previously designated by an employee to be taken from their pay must be personally authorized by the employee under 5 CFR 550.312. Additionally, any changes to an allotment for dues to a labor organization must be taken under regulations prescribed by the Federal Labor Relations Authority (see 5 CFR 550.321) and any applicable collective bargaining agreements.

10. **How will deductions for allotments be affected if an employee's pay is insufficient to permit such deductions because the employee receives a partial paycheck or no pay during a lapse in appropriations?**

    A. Employees should consult their agency or payroll provider for information on how missed allotment deductions will be handled. Employees may want to review their allotments to determine whether they need to make alternative arrangements (e.g., if using allotments to pay loans, alimony, etc.).

    Any allotment for dues to a labor organization previously designated by an employee and which was deferred by the agency or payroll provider during the lapse in appropriations because the employee's pay was insufficient to cover the dues allotment deduction would be taken from retroactive pay when the lapse in appropriations ends.

11. **How will deductions for court-ordered garnishments be affected if an employee's pay is insufficient to permit garnishment deductions because the employee**

receives a partial paycheck or no pay during a lapse in appropriations?

A. Employees should consult their agency or payroll provider for information on how missed garnishment deductions will be handled and may need to make alternative arrangements. If a payroll provider is unable to effectuate the garnishment, it should provide a notice to that effect to affected employees and indicate how the provider intends to handle the missed garnishments going forward. We should note that some payroll providers will need to confer with counsel about how much to collect at any given time in any make-up payments.

E. Performance Awards and Within-Grade Increases

1. **If agency performance management policies and practices require the payment of performance awards to employees, can the payment be delayed until after the shutdown furlough?**

   A. Yes. Neither law nor regulation requires agencies to pay performance awards granted under 5 U.S.C. chapters 43 and 45 and 5 CFR 451.104(a)(3). If agency performance management policies and practices require the payment of performance awards, agencies may delay payment until after the furlough when funds are available.

2. **Are agencies required to pay performance awards to Senior Executive Service (SES) career appointees during a shutdown furlough?**

   A. No. The applicable law (5 U.S.C. 5384) and regulation (5 CFR 534.405) do not specify when an SES performance award must be paid to a career appointee, nor do they provide a basis to pay awards when no appropriated funds are available for that purpose. Therefore, if a shutdown furlough intervenes, an agency may defer payment of SES performance awards until after the furlough, when funds are available.

3. **May agencies deny or delay within-grade or step increases for General Schedule and Federal Wage System employees who are furloughed during a lapse in appropriations?**

   A. Once the lapse in appropriations ends and retroactive pay is payable, employees will be considered to be in pay status during the furlough period. Thus, the effective date of within-grade or step increases for eligible General Schedule and Federal Wage System employees based on service is not affected by time in a furlough status. Quality step increases cannot be retroactively approved and made effective as of a retroactive date absent a nondiscretionary agency policy or collective bargaining agreement that requires a specific effective date.

F. Leave and Other Time Off

1. **May a furloughed employee take previously approved paid time off (e.g., annual leave, sick leave, paid parental leave, disabled veteran leave, court leave, military leave, or leave for bone marrow/organ donor leave, or compensatory time off, including religious compensatory time off) during a lapse in appropriations?**

   A. No, a furloughed employee may not use previously approved paid time off during a lapse in appropriations. Consistent with the Constitution, the Antideficiency Act does not allow authorization of any expenditure before an appropriation is made. Also, the Antideficiency Act does not allow the Government to incur budgetary obligations before an appropriation is made—unless authorized by law (31 U.S.C. 1341(a)(1)(B)). Based on law and OMB and DOJ guidance, certain types of obligations (but not expenditures) are allowed during a lapse in appropriations. The use of previously approved paid time off during a lapse in appropriations would create an obligation or a debt owed by the Government that is not authorized by the Antideficiency Act or other law during a lapse (except under a special provision for excepted employees in 31 U.S.C. 1341(c)(3)), and is thus prohibited. (See Question F.2. regarding paid time off for excepted employees.)

2. **May an excepted employee take previously approved paid time off or be granted new requests for paid time off during a shutdown furlough?**

   A. A lapse in appropriations cancels an excepted employee's previously approved paid leave or other paid time off, for the same reasons that apply to furloughed employees. (See Question F.1.) This does not mean that an excepted employee cannot seek approval to be excused from duty during a lapse. An agency may excuse an excepted employee from duty and place the employee in furlough status for approved periods. An agency may allow an excepted employee to be off duty during periods when the employee was previously scheduled to be on paid leave. That off-duty time may be accommodated by workplace arrangements. (See Question F.2a. for information on use of workplace flexibilities.)

   If that off-duty time cannot be accommodated by workplace flexibilities, the excepted employee will be placed in a furlough status for any approved absence unless the employee requests to use paid leave under 31 U.S.C. 1341(c)(3). We expect that excepted employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) because 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave. Under either approach, any payment will be delayed until after the lapse ends.

   If an excepted employee chooses to request leave under 31 U.S.C. 1341(c)(3) instead

of the default approach of being placed in a furlough status, the employee may make new requests to use paid leave under 5 U.S.C. chapter 63 (or under other applicable law governing the use of leave if chapter 63 is not applicable). Such "paid leave" does not include the various types of paid time off found outside chapter 63 (e.g., compensatory time off, time off award, credit hours). Use of paid leave is subject to the normal rules for the applicable leave program, including leave request and approval procedures. While the paid leave can be used (i.e., resulting in a Government obligation of funds), compensation for the leave cannot be paid until after the lapse ends.

An excepted employee cannot use paid leave under 31 U.S.C. 1341(c)(3) to cover an unauthorized period of absence. If an excepted employee is directed to perform excepted work but fails to report to duty, the employee may be placed in absent without leave (AWOL) status for missed work hours, in accordance with agency policy and procedures. For such an excepted employee, the "standard rate of pay" for AWOL hours is zero. In other words, no retroactive pay is provided for AWOL hours after the lapse in appropriations ends.

2a. Are excepted employees allowed to have intermittent absences from work during a shutdown furlough?

A. Yes. As explained in Question F.2., an excepted employee may be excused from duty for intermittent periods during a shutdown furlough. While excused from performing excepted duties, the employee will be placed in furlough status (default approach) unless the employee elects to use paid leave under 31 U.S.C. 1341(c)(3). (See Question F.7. for specific guidance on employees scheduled to take leave under the Family and Medical Leave Act.)

However, if an excepted employee needs to be absent from work for brief periods, agencies are encouraged to explore the use of workplace flexibilities such as alternative work schedules and telework (subject to applicable laws, regulations, agency policies, and collective bargaining agreements) to accommodate the employee's need to be absent. (See Question C.5. for guidance on alternative work schedules.) If use of workplace flexibilities is not appropriate for the situation, excepted employees must be furloughed for any brief absence or allowed to request paid leave under 31 U.S.C. 1341(c)(3), as explained in Question F.2. (See Question F.2b. for guidance on excepted employees who must be furloughed during an approved absence from work. Also see Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee.)

In making determinations regarding whether to grant requests for time off that result in placement in furlough status, agencies are encouraged to consider the

same principles that guide the granting of various types of paid leave during normal periods of funded operations, while keeping in mind any special work requirements for excepted employees during the lapse in appropriations.

2b. If an agency is willing to approve intermittent absences from work for an excepted employee and use of workplace flexibilities is not appropriate, does the excepted employee have to be placed in a furlough status for these intermittent absences?

A. Generally, when excepted employees are authorized to be absent from work they must be furloughed. As explained in Question F.2, however, excepted employees have the option to request approval to use paid leave under 31 U.S.C. 1341(c)(3). We expect that in most circumstances excepted employees will choose to have the default furlough status applied to any approved absence because that status provides retroactive pay without charge to leave. These furlough periods must be documented by a shutdown furlough notice with applicable appeal rights. Any time an excepted employee is absent from work must be properly documented by a shutdown furlough notice that spells out whatever appeal rights are applicable.

One option would be for the agency to issue a furlough notice for the period of time when the employee will be absent, and then recall the employee when the employee is once again available to come to work and perform excepted activities.

Another option, which may be easier to administer for an employee who will have multiple intermittent absences over a period of time, would be for the agency to issue a modified shutdown furlough notice, which states that the employee is excepted from furlough except for those periods of time they are not working but would otherwise be scheduled to work. (See Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee.) The periods of time an employee is not working should be listed and clearly identified in the modified shutdown furlough notice. As with any modified furlough notice, agencies should issue such notices as soon as practicable.

The above options are examples of two approaches to consider to ensure appropriate procedural rights are provided to furloughed employees. If agency officials elect to pursue an alternative approach in providing a furlough notice to excepted employees approved to be absent from work intermittently, they should consult with their legal counsel to ensure appropriate procedural rights are provided to furloughed employees.

3. May an employee work during the furlough period to accumulate religious compensatory time off hours for religious observances?

A. An employee who is not "excepted" may not work during the furlough period, even to accrue religious compensatory time. However, an excepted employee may work additional hours to earn compensatory time off for religious purposes if the employee is performing excepted activities, though the employee may not use those hours until after the lapse in appropriations is over.

4. **If an employee is scheduled to take approved unpaid leave during a shutdown furlough, should the agency provide the employee with a furlough notice?**

   A. It depends. If the employee is not expected to work during the furlough period (e.g., a 1-year period of leave without pay to accompany a military spouse overseas), then agencies are not required to provide the employee with a furlough notice. If, however, the employee is scheduled to return from unpaid leave to Federal service during the furlough period, the employee should be provided with a furlough notice (effective on the date of scheduled return), unless the employee is expected to be at work performing an excepted activity.

   In the case of an employee who was on preapproved leave without pay (LWOP) during the lapse in appropriations, the employee must continue to be charged LWOP for all periods of such preapproved LWOP that occurred during the lapse.

5. **If an employee is scheduled to take unpaid leave under the Family and Medical Leave Act (FMLA) during a shutdown furlough, should the agency provide the employee with a furlough notice?**

   A. It depends. If the employee is not expected to work during the furlough period (e.g., has requested 12 weeks of unpaid leave (leave without pay (LWOP) under the FMLA), the agency is not required to provide the employee with a furlough notice. If, however, the employee is scheduled to return from LWOP to Federal service during the furlough period, the employee should be provided with a furlough notice (effective on the date of scheduled return), unless the employee is expected to be at work performing an excepted activity. An employee scheduled to take FMLA LWOP throughout the furlough period continues to be charged LWOP. However, the LWOP will not be treated as FMLA leave to the extent it occurs during a furlough period unless the employee chooses to use leave under 31 U.S.C. 1341(c)(3). (As stated in Question F.2., we expect that employees generally will not choose to use leave under 31 U.S.C. 1341(c)(3) since 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave.) Thus, the days of LWOP during a furlough period will not count against the employee's 12-week FMLA leave limit. The employee is not entitled to receive retroactive pay for scheduled LWOP periods that occur during a furlough period, since the standard rate of pay for LWOP is zero.

6. **Does leave under FMLA that is scheduled to be taken during a shutdown furlough period count toward the employee's 12-week FMLA leave entitlement?**

   A. No. OPM considers any previously scheduled FMLA leave that occurs during a lapse in appropriations to be canceled—unless the employee is an excepted employee who elects to use leave under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any LWOP that was previously scheduled to be used under FMLA during a period when there is a lapse in appropriations will remain as LWOP, but the LWOP will not be considered FMLA leave and will not count against the FMLA 12-week limit. If an employee had previously scheduled to substitute qualifying paid leave for unpaid FMLA leave during a period covered by a lapse, the paid leave must be canceled (see Questions F.1. and F.2.) and converted to a furlough period—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). We anticipate that excepted employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) since 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave. Under either approach, any payment will be delayed until after the lapse ends. The canceled FMLA unpaid leave periods (converted to regular LWOP) and the canceled periods of paid leave substitution (converted to furlough time) will not be considered FMLA leave and will not count against the FMLA leave 12-week limit.

7. **If an employee is scheduled to take appropriate paid leave under FMLA during a shutdown furlough, should the employee be furloughed? Will the employee be paid for the periods scheduled to be in paid leave status by substituting paid leave under FMLA?**

   A. During the lapse in appropriations, affected employees who would otherwise be in pay status must be (1) furloughed or (2) at work performing excepted activities—unless an excepted employee elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any previously scheduled paid leave (including paid leave substituted for FMLA LWOP) during the furlough period must be automatically canceled. Thus, any periods of scheduled paid leave or other paid time off must be documented as furlough periods.

   For any hours during the lapse in appropriations for which an employee was previously scheduled to be in FMLA LWOP status, the employee will remain in LWOP status, but will not be considered to be using FMLA leave. (See Questions F.5. and F.6.) For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting paid leave for FMLA LWOP, the employee will be provided retroactive pay and will not be charged paid leave, consistent with the treatment of other employees who had previously scheduled paid leave that was canceled due to the lapse in appropriations. (See Question F.14.

regarding employees who had scheduled use of donated annual leave substituted for FMLA LWOP.)

7a. What should an agency do if an excepted employee faces FMLA-qualifying circumstances?

A. During a lapse in appropriations, an excepted employee must either be (1) working (i.e., excepted from furlough) —unless he or she elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3), or (2) in a furlough status, as referenced in Question F.7. An excepted employee may face circumstances that would normally qualify him or her for unpaid leave under FMLA. The employing agency should allow such an excepted employee to be placed in a furlough status (a form of unpaid leave) for appropriate periods, consistent with his or her rights under FMLA.

8. Are employees who are not excepted from the furlough allowed to take paid leave or other paid time off during periods when other employees are performing work necessary for an orderly suspension of agency operations?

A. No. For such employees, all paid leave or other paid time off is canceled during a period when a lapse in appropriations is in effect. There is no authority to obligate funds for paid time off during a lapse in appropriations. Employees who are not excepted from the furlough are allowed to perform minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities. Being on paid leave is not an activity necessary to execute an orderly shutdown of agency operations. Agencies should determine on a case-by-case basis whether it is necessary to require employees who had been scheduled to take paid time off to report to duty to perform orderly suspension activities or whether to direct such employees to conduct their orderly shutdown activities on the first day after they had originally planned to return to work.

9. May an excepted employee be permitted to earn compensatory time off and credit hours (under flexible work schedules) during the shutdown period?

A. Yes. With agency approval, excepted employees may earn compensatory time off and/or credit hours subject to requirements found in 5 U.S.C. 5543 and 6120–6133; 5 CFR 550.114, 551.531, and part 610, subpart D; or other applicable authority. Each agency is responsible for approving the number of hours an excepted employee can work related to the performance of excepted activities. Employees will not be permitted to use earned compensatory time off or credit hours during the shutdown period.

10. **If an employee has properly scheduled "use-or-lose" annual leave before the start of the third biweekly pay period prior to the end of the leave year, but is unable to use some or all of the scheduled leave because of the furlough, does the furlough constitute an "exigency of the public business" that would permit an agency to restore the leave after the beginning of the new leave year?**

    A. Yes. Employees in this situation should make every effort to reschedule "use-or-lose" annual leave for use before the end of the current leave year. However, OPM and OMB have determined that a lapse in appropriations qualifies as an exigency of the public business for purposes of annual leave restoration. (See OPM CPM 2019-02, Restoration of Annual Leave for Employees Affected by the Lapse in Appropriations (January 9, 2019).) Therefore, as long as the leave was properly scheduled in advance, agencies must restore any annual leave that was forfeited because of the lapse in appropriations—regardless of whether the affected employees were furloughed or excepted from the furlough.

    In order for forfeited annual leave to be considered for restoration under 5 U.S.C. 6304(d)(1)(B), it must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year, in accordance with 5 CFR 630.308(a). Employing agencies are responsible for determining whether an employee met the advance scheduling requirement, based on OPM regulations and agency policies and procedures. As allowed by those agency policies and procedures, the "in writing" requirement may be met in various ways, including electronic communications such as email, electronic calendar scheduling, or submissions to a time and attendance system.

11. **If an employee has properly scheduled use of "restored annual leave" that is due to expire at the end of the leave year (because it is the end of the 2-year restoration period) but that leave is canceled and lost due to lapse in appropriations, may the employing agency restore that leave again?**

    A. Unfortunately, no—unless Congress enacts legislation providing otherwise. There is nothing in existing law or regulation that allows restored annual leave to be restored a second time. In fact, the Comptroller General has determined that unused restored annual leave may not be restored after expiration of the 2-year period. (See B-188993, December 12, 1977.) Any previously restored annual leave that was due to expire at the end of the leave year, and was subsequently forfeited, may not be restored again—even if the forfeiture was due to the lapse in appropriations.

12. **Does a shutdown furlough affect the accrual of annual leave and sick leave?**

    A. No. Under 31 U.S.C. 1341(c)(2), after the lapse in appropriations has ended, an

employee is entitled to be paid the employee's standard rate of pay during any furlough period. If the employee was scheduled to be in a pay status but for the furlough, the employee will receive the employee's regular pay for furlough periods, and there will be no effect on the accrual of annual and sick leave. However, if an employee was previously scheduled to be in a nonpay status without regard to the furlough, the employee's standard rate of pay will be zero, and the employee will remain in the scheduled nonpay status, which can affect the accrual of annual and sick leave under normally applicable rules governing the treatment of nonpay status periods.

Excepted employees earn pay and accrued leave during the periods they perform excepted work activities—even though no payments can be made during the lapse. With the payment of retroactive pay, agencies should ensure that excepted employees' leave accrual is properly credited.

13. **How are employees affected if, during a shutdown furlough, their Federal office is closed or announces a change in operating status due to an emergency, severe weather condition, natural disaster, and other incident causing disruption of agency operations?**

A. Furloughed employees will not be affected if their Federal office is closed or announces a change in operating status during a shutdown furlough and will remain in furlough status.

Exempt employees are not affected by a shutdown furlough and will follow normal operating status announcements and emergency procedures.

Excepted employees will follow normal operating status announcements and emergency procedures during a Federal office closure or change in operating status, which may result in excepted employees being placed in furlough status for any hours of work not performed. This is because during a shutdown furlough, excepted employees must be either (1) working (i.e., excepted from furlough) — unless he or she elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3) or (2) in a furlough status. Furlough of an excepted employee must be documented by a shutdown furlough notice with applicable appeal rights. (See Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee.) Excepted employees who are required to and do perform work on a day their Federal office is closed during a shutdown furlough (e.g., employees required to report even during an emergency or telework) will be paid after Congress passes and the President signs a new appropriations bill or continuing resolution. If necessary due to a disruption of agency operations, a furlough may be documented after the fact. However, a written notice of decision to furlough must be provided as

soon as possible after the furlough begins. (See Question P.2.)

14. What effect does a Government shutdown based on a lapse in appropriations have on an employee who had scheduled use of donated annual leave?

A. Just as with other paid leave, any donated annual leave that is scheduled to be used during a lapse in appropriations must be canceled and converted to furlough status time—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). If the employee is furloughed during periods when the employee had been scheduled to use donated annual leave, the employee is entitled to retroactive pay for the furlough periods under 31 U.S.C. 1341(c)(2). (This is a change from previous OPM policy.)

15. What happens to compensatory time off in lieu of overtime that expires during a shutdown furlough?

A. Although there is no authority to extend the use of compensatory time off in-lieu-of overtime not used within the 26 pay period limitation, payment for the unused compensatory time off must be made at the overtime rate in effect when earned in the following circumstances:

- For FLSA-exempt (i.e., not covered) employees, under 5 CFR 550.114(d)(2), payment must be made if an exigency of the service beyond the employee's control prevented the employee from using the compensatory time off within the regulatory time limits. A lapse in appropriations is considered an exigency of the service beyond the employee's control; thus, if an agency determines that the lapse prevented the employee from using the compensatory time off that would otherwise be forfeited, the agency must provide payment for the unused compensatory time off. (See OPM CPM 2019-06, Pay and Benefits for Employees Affected by the Lapse in Appropriations (January 27, 2019).)
- For FLSA-nonexempt (i.e., covered) employees, under 5 CFR 551.531(d), if, for any reason, earned compensatory time off is not taken within 26 pay periods during which it was earned, the employee must be paid for the overtime work.

16. What happens to compensatory time off for travel that expires during a shutdown furlough?

A. If an employee fails to use his or her accrued compensatory time off for travel before the end of the 26th pay period after the pay period during which it was earned due to an exigency of the service beyond the employee's control under 5 CFR 550.1407(e), the head of an agency, at his or her sole and exclusive discretion,

may extend the time limit for using compensatory time off for travel for up to an additional 26 pay periods.

OPM considers a shutdown furlough to be an exigency of the service beyond the employee's control.

17. What happens to credit hours in excess of 24 credit hours that were earned in the days prior to shutdown that could not be used because of the shutdown?

A. Unfortunately, any credit hours earned by an employee in the days prior to the lapse in appropriations that were in excess of 24 credit hours cannot be carried over into the next pay period and are lost. Under 5 U.S.C. 6126(a), the number of credit hours an employee may carry over from a biweekly pay period to a succeeding biweekly pay period is limited to 24 hours for a full-time employee. There is no authority to provide payment for excess credit hours. The law does not provide for any exceptions.

18. How are advanced annual and sick leave treated during a shutdown furlough?

A. Advanced annual and advanced sick leave are automatically canceled during a lapse in appropriations. Since employees would have been scheduled to be in a pay status during any advanced leave period, they will receive retroactive pay under 31 U.S.C. 1341(c)(2) during any such period once the lapse has ended.

19. Can agencies grant administrative leave to employees who are not able to return to work on the next workday immediately following the end of a shutdown?

A. Agencies are encouraged to be as flexible as possible for employees returning to work following the end of a shutdown. Some employees may face extenuating circumstances or personal challenges that impact their ability to return to work on their next workday immediately following the end of a lapse in appropriations. Accordingly, we encourage managers to take these individual challenges into consideration, and to the extent possible, provide appropriate flexibility to employees who are facing difficulties that may delay their return to work.

Agencies have the flexibility to grant limited amounts of excused absence (administrative leave) for nonwork periods after the lapse is over if deemed necessary based on extenuating personal circumstances that delay the employee's return to duty.

20. Does a shutdown furlough cancel all leave scheduled before the lapse in appropriations, even if the leave occurs after the lapse is over?

A. No. Approval remains in effect for leave approved before a lapse in appropriations that is scheduled for use on a date occurring after the lapse is over. Only paid leave scheduled to be taken during the lapse is canceled.

However, an agency may cancel previously approved leave prospectively under its normal authority. An employee may also cancel a leave request prospectively.

21. How does a shutdown furlough affect an employee who is scheduled to take approved paid parental leave (PPL) in substitution for unpaid FMLA leave? Does PPL that is scheduled to be taken during a shutdown furlough period count toward the employee's entitlement to 12 weeks of FMLA leave and 12 weeks of PPL in an applicable 12-month period?

A. In order to receive paid parental leave (PPL), an employee must invoke unpaid leave under the Family and Medical Leave Act (FMLA) for the birth of a child or placement of a child with the employee for adoption or foster care. PPL is a form of paid leave provided via substitution for FMLA unpaid leave.

During the lapse in appropriations, affected employees who would otherwise be in pay status must be (1) furloughed or (2) at work performing excepted activities—unless an excepted employee elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any previously scheduled paid leave (including PPL substituted for FMLA LWOP) during the furlough period must be automatically canceled. Thus, any absences on days of scheduled PPL, other paid leave, or other paid time off are documented as furlough days.

For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting PPL for FMLA LWOP, the employee will be provided retroactive pay and will not be charged paid leave, consistent with the treatment of other employees who had previously scheduled paid leave that was canceled due to the lapse in appropriations. (See Question F.14. regarding employees who had scheduled use of donated annual leave substituted for FMLA LWOP.) For any hours during the lapse in appropriations for which an employee was previously scheduled to be in FMLA LWOP status, the employee will

remain in LWOP status, but will not be considered to be using FMLA leave. (See Questions F.5. and F.6.)

If an employee had previously scheduled to substitute PPL for unpaid FMLA leave during a period covered by a lapse, the paid leave must be canceled (see Questions F.1. and F.2.) and converted to a furlough period—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). We anticipate that employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) since 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave. Under either approach, any payment will be delayed until after the lapse ends. The canceled periods of paid leave substitution (converted to furlough time) will not be considered FMLA leave and will not count against the FMLA leave 12-week limit in a 12-month period.

22. In order to be eligible for FMLA leave (and to substitute paid parental leave (PPL) or other paid leave for FMLA unpaid leave), an employee must have 12 months of creditable Federal civilian service as specified in 5 U.S.C. 6381(1)(B). Does time spent in furlough status count towards this 12 months of required Federal service?

A. Yes, furlough time counts toward the FMLA 12-months-of-Federal-service eligibility requirement in 5 U.S.C. 6381(1)(B). Neither the title 5 FMLA law or regulations provide for excluding furlough time or any other nonpay status time in determining whether an employee has 12 months of creditable service for purposes of FMLA eligibility. A Federal employee who is furloughed continues to be employed; the placement of the employee in a temporary nonduty, nonpay status does not terminate the employment relationship. (See also Question J.1. for more information on the creditability of nonpay status periods for various purposes.) We note that under 31 U.S.C. 1341(c)(2) furlough periods are generally retroactively converted to pay status periods once the lapse has ended.

23. Under the title 5 paid parental leave (PPL) law, an employee who has substituted PPL for unpaid FMLA leave is required to work for the applicable employing agency (i.e., the agency employing the employee at the time paid parental leave concludes) for 12 weeks after the day on which use of PPL concludes. Does time spent in furlough status count towards the required 12 weeks of work?

A. No. By definition, a furlough period is a period on non-duty status. It does not count as a period of work meeting the 12-week work obligation. See the definition of "work" in the PPL regulations at 5 CFR 630.1705(b)(2).

24. Will the 12-month period following the birth or placement of a child during which an employee may use paid parental leave in substitution of unpaid FMLA leave be

extended due to the furlough?

A. The 12-month period following the birth or placement during which paid parental leave (PPL) may be used in substitution of unpaid FMLA leave is established by statute and regulations (see 5 U.S.C. 6382(a)(2) and 5 CFR 630.1703(b)(1)). PPL must be used during the 12-month period beginning on the date of birth or placement. There is no authority to extend this 12-month period.

PPL must be substituted for unpaid leave granted under the Family and Medical Leave Act (FMLA). FMLA unpaid leave is limited to 12 weeks in any 12-month period. The commencement of a 12-month FMLA period is triggered by the use of FMLA unpaid leave, and that period may or may not correspond to the 12-month period for using PPL (which commences based on the birth or placement of a child), since FMLA unpaid leave may be used for other purposes. A lapse-related furlough does not affect the running of the 12-month clock for a 12-month FMLA period.

For more information on how a lapse-related furlough affects administration of PPL, see Questions F.21., F.22., and F. 23.

25. Will the 12-month eligibility period during which disabled veteran leave may be used be extended due to the furlough?

A. The 12-month eligibility period for the use of disabled veteran leave (DVL) is established by statute and regulations (see 5 U.S.C. 6329(a), 5 CFR 630.1303, 630.1304(a) and 630.1308(a)). DVL must be used during this 12-month eligibility period. There is no authority to extend this 12-month period.

26. Will the advanced scheduling of annual leave requirement in 5 CFR 630.308(a) for annual leave restoration purposes be waived/suspended in the event of a shutdown furlough?

A. No. In order for forfeited annual leave to be considered for restoration under 5 U.S.C. 6304(d)(1), it must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year, in accordance with 5 CFR 630.308(a). An agency may consider restoring annual leave that was forfeited due to an exigency of the public business or sickness of the employee **only** if the annual leave was scheduled in writing before the start of the **third biweekly pay period prior to the end of the leave year**. OPM maintains a listing of pertinent leave year dates on our website.

Employing agencies are responsible for determining whether an employee met the advance scheduling requirement, based on OPM regulations and agency policies and procedures. As allowed by those agency policies and procedures, the "in

writing" requirement may be met in various ways, including electronic communications such as email, electronic calendar scheduling, or submissions to a time and attendance system. As provided in CPM 2019-02 issued on January 9, 2019, OPM and the Office of Management and Budget determined that a lapse in appropriations qualifies as an exigency of the public business for purposes of annual leave restoration. Therefore, as long as the leave was properly scheduled in advance, agencies must restore any annual leave that was forfeited because of the lapse in appropriations—regardless of whether the affected employees were furloughed or excepted from the furlough.

G. Holidays

1. **Will an employee "exempt" from furlough be paid for a holiday that occurs during a shutdown based on a lapse in appropriations?**

   A. Employees are "exempt" from furlough if the work they perform has a separate source of funding and is not affected by a lapse in appropriations. For that reason, an "exempt" employee will be paid for a holiday according to the normal rules governing holidays.

2. **Will employees affected by a lapse in appropriations be paid for a holiday that occurs during the lapse?**

   A. Lapse-affected employees—whether excepted or furloughed—will not receive pay for a holiday that occurs during a lapse in appropriations until after the lapse had ended. After the lapse has ended, an employee affected by the lapse will, except as otherwise provided below, receive his or her regular holiday pay for a holiday (or an "in lieu of" holiday, if applicable) and, if applicable, an excepted employee will receive holiday premium pay for work performed during his or her normal hours of duty on the holiday, and overtime pay for work in excess of the normal hours of duty on the holiday. (See 31 U.S.C. 1341(c)(2).) Also, if an employee was regularly scheduled to work on a holiday and was instead furloughed, the employee is now entitled to holiday premium pay, as discussed in Question D.2.

   An employee who was on preapproved LWOP during the lapse in appropriations must continue to be charged LWOP for the duration of the period approved as LWOP. If such an employee was on LWOP on both the last workday before a holiday and the first workday after the holiday, he or she will not be paid for the holiday. This rule is consistent with OPM's longstanding guidance and a Comptroller General decision (56 Comp. Gen. 393 (1977)).

3. **What is the status of an "excepted" employee who does not perform work on a holiday that occurs during a lapse in appropriations?**

   A. An "excepted" employee who does not perform work on a holiday during a lapse must be placed in a furlough status for the holiday and must be provided written notice of the agency's decision to furlough in accordance with the guidance in section P (Procedures). This is because during a lapse in appropriations all affected employees must be (1) at work performing excepted activities or (2) furloughed. This applies with respect to any period of time that is part of an affected employee's regularly scheduled administrative workweek, including a holiday. (See Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee.)

4. **Will an "excepted" employee who does not work on a holiday that occurs during a lapse in appropriations be paid for the holiday?**

   A. Yes, after the lapse has ended. (See 31 U.S.C. 1341(c)(2).) An "excepted" employee who does not work on a holiday that occurs during a lapse will be placed in a furlough status for the holiday and will receive retroactive pay for the holiday as soon as possible after the lapse ends. (See Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee Due to a Lapse in Appropriations.)

5. **Can an "excepted" employee voluntarily report to work on the holiday?**

   A. No. Each agency must determine which excepted activities must be performed on a holiday, and which employees are needed to perform those functions. Employees who are not otherwise needed to perform excepted functions on the holiday must be placed in furlough status for that day.

6. **Can "excepted" employees be required to perform work on a holiday that occurs during a lapse in appropriations?**

   A. Yes. Each agency is responsible for determining which excepted activities must be performed on a holiday in order to carry out functions related to such excepted activities. Failure to report to duty on a holiday is no different than failure to report to work on any other day (see Question F.2).

7. **What pay entitlements will accrue to an "excepted" employee who performs work on a holiday during a shutdown furlough?**

   A. The Federal Government will be obligated to pay an excepted employee who performs work on a holiday according to the normal rules governing pay for work on a holiday. For example, under 5 U.S.C. 5546(b), a covered employee would

receive his or her rate of basic pay, plus holiday premium pay at a rate equal to the employee's rate of basic pay. In addition, if such an employee performs officially ordered or approved overtime work on a holiday (i.e., work in excess of his or her basic non-overtime work requirement for that day), the employee would receive overtime pay (or compensatory time off) for that work. As explained under Question G.2., an excepted employee cannot receive payment for working on a holiday until an appropriations act or a continuing resolution is enacted. Please note, holiday premium pay and overtime pay are not applicable to certain employees, such as heads of agencies and members of the Senior Executive Service.

8. **How do the "in lieu of" holiday rules apply during a lapse in appropriations?**

   A. Under normal circumstances, all full-time employees, including those on flexible or compressed work schedules, are entitled to an "in lieu of" holiday when a holiday falls on a nonworkday. See OPM guidance on "in lieu of" holidays.

   During a shutdown furlough, generally—

   - The normal "in lieu of" holiday rules apply to employees "exempt" from furlough.
   - The "in lieu of" holiday rules do not apply to furloughed employees (i.e., employees do not receive an "in lieu of" holiday if they are in a furlough status on a holiday).
   - When scheduling holidays for "excepted" employees, the normal "in lieu of" holiday rules apply. However, as explained in Questions G.4., G.5., and G.6., otherwise excepted employees must be furloughed on the "in lieu of" holidays unless they are working.

H. Benefits

1. **What happens if agency employees responsible for processing Federal Employees Health Benefits (FEHB) or Federal Employees' Group Life Insurance (FEGLI) transactions are furloughed?**

   A. Agencies will continue to process FEHB and FEGLI transactions during a lapse in appropriations. Employees responsible for processing FEHB or FEGLI transactions must be excepted to perform this work because the law designates the processing of these transactions as emergency services that must continue under the Antideficiency Act. (See 5 U.S.C. 8702(d), 8905(i); 5 CFR 870.106, 890.113.)

Federal Employees Health Benefits Program—General

2. **Will an enrolled employee continue to be covered under the FEHB Program during a lapse in appropriations if the agency is unable to make its premium payments on time?**

   A. Yes. The employee's FEHB coverage will continue even if an agency does not make the premium payments on time. Following the lapse, each employee who returns to pay status will automatically begin to repay their share of FEHB premium that accumulated during the lapse through payroll withholding. If FEHB premiums are not withheld from retroactive pay, one additional payment in addition to the current pay period amount will be withheld in each subsequent pay period until the employee's accumulated share of premiums have been paid.

3. **What happens if an employee wants to terminate FEHB coverage while in a non-pay status in order to avoid the expense?**

   A. Unlike other types of non-pay status, employees in a non-pay status due to a lapse in appropriations (shutdown furlough) will not have the opportunity to terminate or cancel FEHB coverage outside of Open Season or experiencing a qualifying life event. The employee will remain covered; the enrollee's share of their FEHB premium will accumulate and be withheld from pay upon return to pay status.

4. **Can an employee who has been furloughed enroll or make changes to their FEHB enrollment during a furlough due to a lapse in appropriations?**

   A. Yes. An employee who is furloughed and experiences a qualifying life event can enroll or make changes in enrollment in the FEHB Program. (See 5 CFR 890.301.) Employees can also enroll or make changes during the annual Open Season. Employees are encouraged to contact appropriate agency human resources staff to ensure they follow the proper processes.

FEHB Program—Open Season Enrollments/Changes

5. **Would a lapse in appropriations alter the effective date of an FEHB Open Season enrollment change if an enrollment request was fully processed by an agency and submitted to the health plan prior to the lapse?**

   A. No. If an enrollment change request was submitted to the health plan and processed, the effective date of an FEHB Open Season change would still be the first day of the first full pay period in January.

6. **An employee is in a non-pay status due to a shutdown furlough and is enrolled in a new FEHB plan effective at the beginning of the plan year because their current plan is terminating participation in the FEHB Program. Which carrier is responsible for providing benefits for covered services in January?**

   A. It depends upon the date in January that services are needed. Coverage under the new plan begins on the first day of the first pay period that begins on or after January 1. Before that coverage effective date, the terminating plan is responsible for providing benefits for covered services.

Other Insurance Programs

7. **What happens to an employee's Federal Employees' Group Life Insurance (FEGLI) Program coverage if furloughed?**

   A. The employee can maintain their FEGLI coverage for up to 12 months in a non-pay status. When the lapse ends, the employee will receive retroactive pay under 31 U.S.C. 1341(c)(2) and retroactive FEGLI premiums may be withheld from that pay. If FEGLI premiums are not withheld from retroactive pay, no more than one additional payment will be withheld in each subsequent pay period until all premiums have been paid.

8. **What happens to an employee's Flexible Spending Account (FSAFEDS) coverage if furloughed?**

   A. Payroll deductions will cease for any employee that does not receive pay. The employee remains enrolled in FSAFEDS, but claims for eligible health care expenses incurred during a non-pay status will not be reimbursed until the employee returns to a pay status following the lapse and allotments are successfully restarted. The remaining allotments are recalculated over the remaining pay periods to match the participant's election amount. However, any claim submitted with dates of service prior to an employee entering non-pay status will be paid in accordance with existing procedures, up to the balance of the employee's annual election.

   Eligible dependent care expenses incurred during a non-pay status may be reimbursed up to whatever balance is in the employee's dependent care account—as long as the expense incurred during the non-pay status allows the employee (or spouse if married) to work, look for work, or attend school full-time.

9. **Will the effective date of my FSAFEDS enrollment be affected?**

   A. No.

10. What happens to an employee's Federal Long Term Care Insurance Program (FLTCIP) coverage if furloughed?

A. FLTCIP coverage will continue for enrollees who are furloughed or excepted from furlough and working without pay during a shutdown furlough based on a lapse in appropriations. In addition, FLTCIP coverage may not be canceled as a result of non-payment of premiums or other periodic charges due to a lapse in appropriations. (See 5 CFR 875.302.) Employees paying premiums via Direct Bill or Automatic Bank Withdrawal will continue to be billed, but the insurer will not terminate for non-payment of premium during the lapse in appropriations. Regarding claims eligibility requests for FLTCIP during a shutdown furlough, claim benefits will not be reimbursed to the enrollee until all past due premiums are paid. At the end of the shutdown, FLTCIP premiums will be paid from retroactive pay provided under 31 U.S.C. 1341(c)(2) or may be paid back from another source (i.e., automatic bank withdrawal) for FLTCIP enrollees who elected to make payments directly to the Carrier.

If missed premium payments are unable to be collected via automatic bank withdrawal or deductions from the enrollee's payroll or annuity/pension, enrollees will be billed directly for the premium amount due. After the shutdown, if the enrollee elected to pay their premium via automatic bank withdrawal, past due premiums will be collected by withdrawing up to two months of premiums from the enrollee's bank account each month until it is current. For enrollees who did not elect to make payment directly, FLTCIP premiums will be paid to the Carrier from enrollees' retroactive pay made available as soon as practicable upon the end of the lapse.

11. What happens to an employee's Federal Employees Dental and Vision Insurance Program (FEDVIP) coverage if furloughed?

A. Coverage will continue for an individual enrolled in FEDVIP who is furloughed or excepted from furlough and working without pay during a lapse in appropriations, and an enrollment may not be canceled as a result of nonpayment of premiums or other periodic charges due to a lapse. (See 5 CFR 894.405.) Payroll deductions will temporarily cease for any employee that does not receive pay.

Employees are entitled to retroactive pay under 31 U.S.C. 1341(c)(2) for excepted work performed during the lapse and for furlough periods at the standard rate of compensation. At the end of the shutdown, the accumulated FEDVIP premium for this period will be withheld from their pay. If FEDVIP premiums are not withheld from retroactive pay, no more than one additional payment will be withheld in each subsequent pay period until all premiums have been paid.

12. Will the effective date of my FEDVIP Open Season enrollment be affected?

A. No.

I. Employee Assistance

1. Are employees entitled to unemployment compensation while on furlough?

A. It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Federal Employees.") Agencies or employees should submit questions to the appropriate State (or District of Columbia) office.

The Department of Labor's website provides links to individual State offices (See Department of Labor's website at Unemployment Benefits Finder | CareerOneStop). States will require you to provide your Agency's Federal Identification Code when you file your application.

2. Can I take a Thrift Savings Plan (TSP) loan while I'm furloughed?

A. A lapse in appropriations does not prevent TSP participants from requesting a new TSP loan. The established eligibility requirements continue to apply. TSP participants can go to TSP loans or read the TSP Loans booklet for more information about eligibility requirements.

2a. Where can agencies and employees find information on Thrift Savings Plan (TSP) accounts, loans, and loan payments during a lapse in appropriations?

A. Should there be a lapse in appropriations, TSP communications will be posted on the TSP website.

3. What resources are available if a Federal employee needs financial assistance during a Government shutdown?

A. Some agency employee assistance programs (EAP) include financial consultation services. In addition, employees may want to contact their financial institution, credit union, or learn about their options through the Thrift Savings Plan.

4. **How will Federal employees access Employee Assistance Program (EAP) services in the event of a Government shutdown?**

   A. EAP services can be helpful in providing confidential counseling and coaching with experienced, licensed counselors—including legal and financial consultation. Federal employees are advised to contact their agency's EAP office to determine whether services will be available in the event of a lapse in appropriations. Employees may use OPM's website to find more information on EAPs. Many Federal agency EAPs are serviced by Federal Occupational Health (FOH), a division of the Department of Health and Human Services (HHS). Employees who know that their agency uses FOH as a provider may contact FOH's toll free EAP phone number, (800) 222-0364 (TTY (888) 262-7848), to find out how to access EAP services during a lapse in appropriations. Agency websites can also be consulted to identify the contact information of other EAP providers and to receive program details.

J. Service Credit for Various Purposes

1. **Is furlough or leave without pay (LWOP) considered a break in service?**

   A. No. Both terms mean that the employee continues to be employed but in a nonpay, nonduty status for those days/hours. Under normal circumstances, an extended period of nonpay status could affect the calculation of creditable service for certain purposes. However, under 31 U.S.C. 1341(c)(2), furlough periods are generally retroactively converted to pay status periods once the lapse has ended. (An employee who was in a scheduled nonpay status (e.g., LWOP, AWOL, suspension status) during a furlough period will not be placed in a pay status. Also, an employee who refused to perform excepted work during a furlough period may be placed in AWOL status.) For all employees who are retroactively placed in a pay status during a furlough period, the time will be fully creditable service.

2. **To what extent does nonpay status affect Federal employee benefits and programs?**

   A. See answer to Question J.1.

K. Federal Employees on Military Duty

1. **Can employees who have previously scheduled military leave under 5 U.S.C. 6323 for days covered by a lapse in appropriations take this leave during the lapse?**

   A. No. As with other types of paid leave, paid military leave must be canceled for days covered by the furlough. An employee who had previously scheduled

military leave under any of the provisions in 5 U.S.C. 6323 for absences during a lapse in appropriations would have been in a pay status but for the lapse. Accordingly, such an employee is entitled to receive retroactive pay at the employee's "standard rate of pay" after the lapse in appropriations ends.

For employees on active military duty, their status as Absent-Uniformed Service (formerly Leave Without Pay-Uniformed Service (LWOP-US)) is unchanged by periods of intermittent annual or military leave, per the guidance in the Frequently Asked Questions on Military Leave.

2. **Will employees continue to receive a reservist differential payment (5 U.S.C. 5538) while on active duty when they are furloughed from their Federal civilian employment?**

   A. No. The reservist differential payments are intended to make up the difference between the employee's customary civil service compensation and his or her military pay, and are made from the funds of the employing agency appropriated for the payment of employees' salaries. Since funds are not available for employees' salaries during a furlough, no funds may be obligated towards any type of payment for reservist differential. However, after the lapse in appropriations ends and employees receive retroactive pay for the period of the furlough pursuant to 31 U.S.C. 1341(c)(2), it will be necessary for the agency to calculate any reservist differential payments that may be owed.

3. **Will there be an impact on an employee's General Schedule or Federal Wage System within-grade increase (WGI) waiting period due to an employee being in an Absent-Uniformed Service status during a shutdown furlough?**

   A. No. The furlough has no impact on an employee's General Schedule or Federal Wage System WGI waiting period if the employee is in an Absent-Uniformed Service status. An absence for the purpose of engaging in military service is creditable service in the computation of waiting periods for successive WGIs when the employee returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation. (See 5 CFR 531.406(c)(1)(i) and 5 CFR 532.417(c)(4).)

4. **Can employees retroactively substitute military leave under 5 U.S.C. 6323 for Absent-US LWOP (absent uniformed services leave without pay) on a day before or after a holiday during a lapse in appropriations in order to receive pay for the holiday?**

   A. No. Employees may not retroactively substitute military leave for LWOP during

the furlough period since furloughed employees generally may not be charged any other form of paid leave (i.e., annual leave, sick leave, or other paid leave), compensatory time off in lieu of overtime, compensatory time off for travel, religious compensatory time off, or credit hours under a flexible work schedule during the furlough period. (See Questions F.1. and F.4.) Any military leave that had been scheduled (before the lapse in appropriations) for use during the lapse is canceled during the lapse, and the employee generally would be furloughed during the time the employee was scheduled to be on military leave. After the lapse in appropriations ends, employees are entitled to retroactive pay at the standard rate of pay pursuant to 31 U.S.C. 1341 for any furlough period. Thus, if an employee was scheduled to use military leave on the day before or after a holiday but the military leave was canceled due to a lapse in appropriations, and the employee was instead furloughed on the holiday, the employee will receive retroactive pay for that holiday equal to the normal paid time off for a holiday. However, if an employee was scheduled to be on Absent-US LWOP on the workdays before and after a holiday, the employee will not receive retroactive pay for the holiday.

5. **Must agencies recredit military leave canceled during a shutdown?**

   A. Yes. As a result of the cancellation of scheduled military leave during the lapse in appropriations, agencies must recredit an employee's military leave account. This recredited military leave may be used after the end of the lapse in appropriations.

L. Retirement

1. **If a shutdown furlough occurs during the employee's highest years of salary, what effect will time in a furlough status have on an employee's high-3 average pay?**

   A. Once the lapse in appropriations ends, employees who would have been in pay status but for the lapse will receive retroactive pay for furlough periods pursuant to 31 U.S.C. 1341(c)(2). Thus, there will be no effect on such an employee's high-3 average pay.

2. **Are the retirement rules concerning the effect of a shutdown furlough the same for employees under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS)?**

   A. Yes.

3. **What will happen to employees who would have retired during a shutdown**

furlough?

A. For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, agencies should, when the lapse in appropriations ends, make the retirement effective as of the date requested. The retirement request may be informal (such as a letter requesting retirement), and can be either mailed or personally submitted to the agency. Any additional required paper work, such as the formal retirement application form, may be completed when the agency reopens. No time spent by the retiree in such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the agency.

4. **If an employee is scheduled to retire before the end of the leave year with an annual leave balance of over the maximum leave ceiling (e.g., 240, 360, or 720 hours, as applicable) and the furlough prevents the employee's retirement from getting processed until January, does the employee lose his or her annual leave above the maximum leave ceiling?**

   A. No. The employee's retirement would be retroactively applied to a date prior to the end of the leave year, and the employee would receive the full amount of accumulated and accrued annual leave in a lump-sum payment.

M. Retirement Services: Government Closure

1. **I'm a Federal retiree. Will I still receive my monthly annuity payment during a Government shutdown?**

   A. Yes. Federal retirees under the CSRS and FERS retirement systems will still receive their scheduled annuity payments on the first business day of the month.

2. **How can I make updates or changes to my retirement benefits?**
   A. OPM's Retirement Services is available to assist you with your retirement benefits. As always, you can make many of these changes online through Services Online or by calling Retirement Services at (888) 767-6738. Due to the volume of calls, we recommend that you first use the online services site to make immediate updates and changes. You can also find general information online.

3. **How do I report the death of a family member during a Government shutdown?**

   A. You can refer to our website Annuitant Death Index - RS Reporting (opm.gov) for information on reporting the death of a current retiree and applying for any benefits, or by calling us directly at (888) 767-6738. If the family member was a Federal employee at the time of death, survivors must contact the agency for which

the deceased worked. If the employing agency is closed, you may need to wait until after the shutdown ends to begin the process.

4. **I recently retired from Federal service. Will my retirement application be delayed by a Government shutdown?**

   A. If your agency or payroll center submitted your retirement application to OPM, you will begin receiving interim annuity payments while OPM Retirement Specialists process your application. Because OPM Retirement Services is funded by the trust fund it manages, OPM Retirement Services employees will still be working normal operating hours during a Government shutdown.

   If your agency or payroll center has not yet submitted your retirement application or the application is incomplete, you will likely experience some delay as OPM must wait on other agencies to submit all the information needed to process your retirement. Some functions of these agencies may not be operating during a Government shutdown.

5. **I applied for disability benefits. Will my application still be processed?**

   A. Employees in Retirement Services at OPM will continue working on your application. If the application requires additional information from other agencies, expect delays during a Government shutdown.

6. **Can I submit a court order that awards a retirement benefit to OPM during a Government shutdown?**

   A. Yes. OPM employees will continue working to process court ordered retirement benefits.

N. Payments upon Separation from Federal Service

1. **If there is a shutdown furlough, how does this impact a separating employee's lump-sum payment for their unused annual leave?**

   A. In the event of a shutdown furlough, any payments incurred by the agency for an employee's lump-sum payment will be delayed until funds are available.

2. **How are separated employees' entitlements to severance pay affected by a shutdown furlough?**

   A. Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the Government of the United States. (Severance pay is suspended or terminated when the individual is reemployed by the Federal Government.) Severance pay is paid at

the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued continuing entitlement to severance pay. If the recipient is reemployed by the Federal Government during a pay period, he or she is entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g., 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period).

Thus, in the case of a shutdown furlough, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as payroll checks for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of nonexcepted activities, severance pay checks covering days before the lapse may also be processed.

No funds may be authorized for severance payments for days during the lapse until an appropriation is enacted.

See additional information on severance pay (including eligibility criteria and payment formulas).

O. Benefits under the Federal Employees' Compensation Act (FECA)

1. How is Continuation of Pay (COP) under the Federal Employees' Compensation Act affected by a Government shutdown?

A. The Department of Labor's Office of Workers' Compensation Programs, which administers the Federal Employees' Compensation Act (FECA), advises that, in the event of a Government shutdown, an employee who is disabled due to his or her injury is to be maintained in COP status during the shutdown unless the agency does not have monies available to pay the salary of that employee. When funding is restored, COP can be retroactively paid, but it cannot be paid for the same period as retroactive salary is paid. In the event an agency is legally unable to pay COP to an employee because of a lapse in appropriations, the employee may file a claim for regular FECA wage loss compensation for that period.

Employees in COP status will not receive retroactive pay under the Government Employee Fair Treatment Act of 2019 (31 U.S.C. 1341(c)(2)). They are already receiving pay for the time periods under the workers' compensation program. Even if agencies coded employees in COP status as being in furlough status, or gave them a furlough notice, the COP status was unaffected and thus excused absences do not apply.

2. **Are employees who are injured while on furlough or LWOP eligible to receive workers' compensation?**

   A. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

Note to Section O: Any additional questions regarding Federal workers' compensation benefits should be directed to the Division of Federal Employees', Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor.

P. Procedures

1. **How is a shutdown furlough documented?**

   A. Unlike an administrative furlough, agencies should *not* prepare an SF-50, "Notification of Personnel Action" (or a List Form of Notice for a group of employees who are to be furloughed on the same day or days each pay period) at the outset of a shutdown furlough. Instead, employees will receive a shutdown furlough notice citing the reasons for the furlough because the ultimate duration of a shutdown furlough is not known by agencies at the outset of the furlough. Once an appropriation has been signed by the President, agencies will be instructed on the appropriateness of preparing documentation consistent with Chapters 15 and 16 of *The Guide to Processing Personnel Actions*.

1a. In addition to a shutdown furlough notice, what other documentation should be provided to furloughed employees?

A. Agencies should provide each furloughed employee a Form SF-8 (Notice to Federal Employee about Unemployment Insurance). This form provides information on filing unemployment compensation claims, including the agency's mailing address and Federal identification code. Employees may be asked to provide or refer to this form when they file a claim with their State unemployment insurance agency.

2. **In the event of a shutdown furlough, can an employee be furloughed without first receiving a written notice of decision to furlough?**

   A. While an employee must ultimately receive a written notice of decision to furlough, it is not required that such written notice be given prior to effecting the emergency furlough or in person, although it is recommended. Advance written

notice (including through email) is preferable, but when prior written notice is not feasible, then any reasonable notice (e.g., telephonic, oral, personal email, or by mail promptly after the furlough) is permissible when the furlough decision is made. However, a written notice of decision to furlough must be provided as soon as possible after the furlough begins. See Question P.2a. for providing electronic notice of a furlough action.

2a. May employees conduct orderly shutdown activities remotely? May an agency provide an employee electronic notice of a furlough action?

A. In many cases, orderly shutdown activities (including the distribution of furlough notices and, where necessary, the adjustment of voicemail and email messages to reflect the agency's operating status) may be conducted remotely. Agencies that issue furlough notices should consult with their legal counsel to ensure each step of the process is consistent with legal requirements. If an agency determines it will electronically notify affected employees of a furlough action, OPM recommends that the agency include each employee's name, address, and/or e-mail address on the decision notification so that it is clear that an employee is receiving personal notification. Agencies should also consider including in the body of the electronic correspondence, the requirement that the employee provide an email acknowledgement of receipt. If an agency does not receive a requested acknowledgement of receipt of an e-mail notification, it should consider delivering a paper copy of the decision notification to the employee at his or her home address by registered mail with a return receipt requested. Similarly, agencies must deliver hard copy furlough notices to those employees without email access.

Additionally, OPM recommends that agencies consider informing employees as soon as practicable whether or not an employee is subject to the furlough and provide a contact person who can answer questions related to this issue. Finally, agencies with bargaining unit employees are reminded that they must provide notice and opportunity to bargain over negotiable procedures and appropriate arrangements to any unions representing their employees.

2b. What are an agency's regulatory obligations in providing an appellant the Merit Systems Protection Board (MSPB) appeal information in the adverse action furlough decision notice?

A. An agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. (5 CFR 1201.21). Providing a link to the MSPB appeal form electronically will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. However, if the employee informs the agency

that he or she lacks Internet access, the agency is required to take steps to ensure that the employee has actual access to the MSPB's regulations and the appeal form, including providing the employee with a hard copy of these documents upon the employee's request. See Sample Notice for sample decision notice language.

2c. What is the treatment of employees who are serving, or about to serve, a suspension during a lapse in appropriations?

A. If an employee is serving a suspension or scheduled to serve a suspension when a shutdown furlough becomes effective, agencies have the option of holding the suspension in abeyance during the period of shutdown, or delaying the commencement of suspension until after the shutdown ends. During the shutdown, such employees should be properly designated by the agency as exempt, excepted, or non-excepted and treated accordingly. If the employee is subject to furlough, the employee should receive the appropriate shutdown adverse action furlough notice.

2d. What is the treatment of employees who are in AWOL status at the beginning of the lapse in appropriations?

A. If an employee is AWOL at the beginning of the lapse in appropriations, and the employee is otherwise subject to furlough during the shutdown, he or she should be provided a furlough notice and placed in a temporary non-duty, non-pay status because of the lack of appropriated funds. Thus, the employee cannot be AWOL during this time, despite any belief the employee would not have otherwise reported to work. The employee should be coded the same as all other employees who are furloughed during this time. If the employee fails to report to work following the end of the shutdown, he or she will be considered AWOL, and subject to any consequences that may follow from being AWOL after the end of the shutdown. Conversely, if the employee is *excepted* from furlough, ordered to report to work during the shutdown yet failed to do so, he or she would be considered AWOL during this time, and subject to any consequences that may follow from being AWOL.

3. What information should be included in the notice of decision of a shutdown furlough when no advance notice is issued?

A. The notice must specify the reason for the furlough and state that the usual 30 calendar days advance notice was not possible due to the emergency requiring curtailment of agency operations. If some employees in a competitive level will not be furloughed because they are performing one of the excepted activities defined by OMB standards, OPM recommends a statement such as the following:

"If employees are being retained in your competitive level, they are required for

orderly suspension of agency operations, or they are performing one of the excepted activities defined by law."

For career members (except reemployed annuitants) of the Senior Executive Service (SES), the written notice must provide the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; and, if the notice period is less than 30 calendar days, the reason for the shortened period. For an SES probationer, the notice should also explain the effect (if any) on the duration of the probationary period. See Question P.6a. regarding noncareer, limited term, or limited emergency appointees and reemployed annuitants holding career appointments.

All notices must include a statement of applicable appeal and grievance rights. An agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. Providing a link to the MSPB appeal form electronically will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. However, if the employee informs the agency that he or she lacks Internet access, the agency is required to take steps to ensure that the employee has actual access to the MSPB's regulations and the appeal form including providing the employee with a hard copy of these documents upon the employee's request.

See "Sample Shutdown Furlough Decision Notice Due to Lapse in Appropriations." This sample can be used for SES and non-SES employees.

3a. How should the decision letter for a shutdown furlough be framed if the specific number of furlough days is unknown?

A. While it is desirable when possible to inform the affected employee of a specific number of furlough days in the decision letter, the agency needs only to set out the maximum time that may be involved, so employees have as much information as possible.

3b. What procedural rights apply to employees who are veterans covered under 5 U.S.C. chapter 75 and 5 CFR part 752 for a shutdown furlough?

A. For a shutdown furlough of a covered veteran employee, the law (5 U.S.C. 7513) gives a covered veteran employee the same procedural rights as other covered employees. Employees should consult with their agency Human Resources office to determine whether they are covered by 5 U.S.C. 7513 and what procedures may apply to them.

3c. If an employee decides to challenge a shutdown furlough, from what point would the time for appeal to the Merit Systems Protection Board run?

A. Employees must file an appeal within 30 days after the effective date of their first furlough day, or 30 days after the date of their receipt of the decision notice whichever is later.

4. In addition to statutory and regulatory procedural requirements, what other forms of communication should an agency consider when implementing a shutdown furlough?

A. Considering the uncertain and changing circumstances surrounding a shutdown furlough, agencies should make efforts to ensure that employees are provided with up-to-date and accurate information. If time permits before a furlough starts, this may be done through effective union-management communication, employee briefings, periodic bulletins, and newsletters. Once a furlough begins, agencies can also consider using toll-free hotlines and emails to home email accounts.

5. How does the length of a shutdown furlough affect the procedures that are used to implement the furlough of employees?

A. The length of a shutdown furlough does not affect the procedures that are used.

For most employees, shutdown furloughs lasting 30 calendar days or less (22 workdays) are covered by OPM regulations under 5 CFR part 752, adverse action procedures. Shutdown furloughs lasting 30 calendar days or less (22 workdays) for career appointees in the Senior Executive Service (except reemployed annuitants) are covered under 5 CFR part 359, subpart H. See Question P.6a. regarding noncareer, limited term, or limited emergency appointees in the SES and reemployed annuitants holding career appointments.

Shutdown furloughs lasting more than 30 calendar days (22 workdays) are also covered by OPM regulations under 5 CFR part 752, adverse action procedures or 5 CFR part 359, subpart H, as applicable. When the shutdown furlough goes beyond 30 days, agencies should treat it as a second shutdown furlough and issue another adverse action or furlough notice.

Note: Reductions in force (RIF) furlough regulations and SES competitive furlough requirements are not applicable to emergency shutdown furloughs because the ultimate duration of an emergency shutdown furlough is unknown at the outset and is dependent entirely on Congressional action, rather than agency action. The RIF

furlough regulations and SES competitive furlough requirements, on the other hand, contemplate planned, foreseeable, money-saving furloughs that, at the outset, are planned to exceed 30 days.

6. What procedures and appeal rights are applicable for noncareer, limited term and limited emergency employees in the SES and reemployed annuitants holding career SES appointments?

A. Noncareer, limited term, and limited emergency SES appointees and reemployed SES annuitants holding career appointments are not covered by 5 CFR part 359, subpart H, and they may be furloughed under agency designated procedures, which should include certain minimum features, e.g., whenever possible, a written notice at least 1 day before the furlough that states the reason for, duration of, and effective dates of the furlough.

6a. What impact does the shutdown have on employees whose probationary period ended during the lapse in appropriations? Can the probationary period be extended?

A. Placement of a probationary employee in a non-duty status due to a shutdown furlough does not extend the probationary period (for either non-SES or SES employees). This is because the Government Employee Fair Treatment Act of 2019 (31 U.S.C. 1341(c)(2)) ensures that all furloughed and excepted employees "shall be paid" for the period of the lapse, and in accordance with regulations, periods of absence while in a pay status count toward completion of probation. Once an individual completes the probationary period, s/he is covered by relevant adverse action procedural and appeal rights.

6.b. What impact does a shutdown have on the probationary or trial period certification required under 5 CFR 11.5?

A. Agencies are not relieved from completing certifications for continued employment of their employees serving a probationary or trial period. Where an agency decides not to issue a certification, the probationary or trial period employee's employment will terminate before the end of the tour of duty on the last day of their probationary or trial period. Where an agency has not processed its certification of a probationary or trial period employee, it may do so as part of its orderly shutdown activities. For employees not certified before the end of their probationary or trial period and where the agency wants to retain them, they should furlough the employees and petition the Director of OPM to reinstate the employees under 5 CFR 11.5. Petitions should be submitted to probationaryappeal@opm.gov.

6.c. Is the processing of certifications, terminations, and petitions to the Director of OPM under 5 CFR 11.5 permitted during a shutdown?

A. Yes, agencies may process certifications, terminations, and petitions under this rule as part of their orderly shutdown procedures. This includes providing advance written notice of the effective date of termination if the agency did not previously provide this notice.

7. How do agencies implement a shutdown furlough for Administrative Law Judges?

A. The Antideficiency Act applies to Administrative Law Judges (ALJs). Accordingly, they should be furloughed unless they are performing functions that are not funded by annual appropriations or meet one of the Antideficiency Act's exceptions. The Merit Systems Protection Board (MSPB) has adopted procedures for implementing furloughs for ALJs, which are described in 5 CFR 1201.137–141. Those procedures, however, do not specifically address the unique issues raised by an emergency furlough necessitated by a Government shutdown. Accordingly, agencies should consult their legal counsel about how to implement a furlough of ALJs.

8. What happens to new employees who are scheduled to report to work for the first time during a shutdown furlough?

A. By law, individuals do not become Federal employees until they report for work and are sworn in. Agencies should consider delaying the entrance-on-duty (EOD) date for new employees who are scheduled to report to work for the first time during a shutdown furlough.

9. At the time of an appropriations lapse, an employee who is funded through a lapsed appropriation is on temporary duty assignment away from the employee's normal duty station. The agency notifies the employee to return to the employee's normal duty station. Can the employee elect to delay the return? If the employee decides to delay the return, and as a result the employee incurs additional travel costs, who is liable for those additional travel costs?

A. Employees who are notified to return home should do so as soon as practicable. When an employee returns promptly, the travel expenses that the employee incurs in the return are properly-incurred obligations of the agency (as part of the agency's orderly-shutdown activities), and the agency will reimburse these travel costs after appropriations are enacted and are available for that purpose. If, however, an employee elects not to return promptly and, as a result of this decision, the employee incurs additional travel expenses, those additional travel expenses are not obligations of the agency, and will not be reimbursed (instead, the employee is

personally liable for the additional travel expenses); while the employee will be personally liable for the additional travel expenses, the agency will continue to incur the obligation for those travel costs that would have been incurred if the employee had returned promptly, and the agency will reimburse such "prompt return" travel costs after appropriations are enacted and are available for that purpose. Finally, in the case of those employees who are notified by their agency that they are to remain on travel, because the continuation of their travel is in direct support of an excepted agency activity, their travel expenses are properly-incurred obligations of the agency (as part of the agency carrying out an excepted activity), and the agency will reimburse the travel costs after appropriations are enacted and are available for that purpose.

10. **What happens to current Federal employees who are scheduled to transfer to a new agency during a shutdown furlough?**

    A. Agencies should consider delaying the entrance-on-duty date for employees who are scheduled to transfer to a new agency during a shutdown furlough. Such employees would remain on the rolls of their former agency until the new transfer effective date can be redetermined by the former agency and the new employing agency once the lapse in appropriations has ended.

11. **Will the Merit Systems Protection Board (MSPB) be addressing furlough related appeals during the shutdown?**

    A. Please consult the MSPB website for additional information on the processing of appeals during any lapse in appropriations.

12. **If a Government shutdown occurs, how will furloughed employees be informed when it is over?**

    A. Employees should follow their agency procedures, including any applicable collective bargaining agreements, which may include monitoring OPM's website and media outlets for notification that a continuing resolution or appropriation has been signed by the President.

13. **When a Government shutdown ends, when are furloughed employees expected to return to work?**

    A. If a shutdown were to occur, guidance concerning when furloughed employees should come back to work at the conclusion of the shutdown would have to be tailored to the specific situation. In the absence of such guidance, agencies should apply a rule of reason in requiring employees to return to work as soon as possible, taking into account the disruption in the lives and routines of furloughed

employees that a shutdown causes.

Q. Labor Management Relations Implications

1. **When a lapse in appropriations requires a shutdown furlough, what is an agency's obligation to bargain?**

   A. The decision whether to furlough employees and which activities are excepted from a furlough are management rights that are not subject to bargaining. (See 5 U.S.C. 7106(a).) However, when an agency determines that a shutdown furlough is necessary, agencies have a duty to notify their exclusive representatives and, upon request, bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already "covered by" a collective bargaining agreement.

   In the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities due to a Government shutdown, whatever bargaining that can occur prior to taking action should occur to the extent possible before furlough actions are necessary. However, if agreement is not reached in the time allowed, the agency should tell the union what actions it will take and offer to continue bargaining on a post implementation basis.

2. **Do agencies have an obligation to bargain before it is known whether a lapse in appropriations will occur?**

   A. The law requires an agency to bargain during the term of a collective bargaining agreement on negotiable union-initiated proposals concerning matters that are not expressly contained in, or otherwise covered by, the collective bargaining agreement, unless the union has waived its right to bargain about the subject matter involved. Accordingly, there may be a bargaining obligation if a union makes negotiable proposals in advance of a shutdown that address procedures and appropriate arrangements for affected employees. Agencies should evaluate the circumstances of their situation to determine whether there is a duty to bargain on union proposals concerning furlough procedures.

3. **What is the agency's obligation in responding to a union request under 5 U.S.C. 7114 seeking the agency's furlough plan and a list of excepted and nonexcepted employees?**

   A. An agency is required to provide data that is normally maintained, reasonably available and necessary to perform the representational duties of a union. A union requesting information must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the

uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the statute. The union must establish that the requested information is required in order for the union to adequately represent its members. An agency denying a request for information must assert and establish any countervailing anti-disclosure interests. An agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." With this in mind, agencies will have to evaluate the circumstances of their situation to determine whether they should provide the requested information.

4. **Can union officials perform representational work on "official time" during a shutdown?**

   A. Exempted employees (i.e., employees not affected by a lapse in appropriations—see Question B.3. explaining "exempt" employees) serving as union officials may continue to be granted official time to the same extent and in the same manner as they would under non-shutdown conditions. In general, other employees serving as union officials may not work on official time during a shutdown, because they would be authorized to work official time only while they are in a duty status. Union officials, like other employees, may utilize up to four (4) hours to participate in the orderly suspension of operations.

   There may be a narrow set of circumstances where exercise of a union's statutory rights could itself constitute an excepted activity and thereby fall within the Antideficiency Act's exceptions. If an agency official who is excepted (i.e., an individual paid by annual appropriations who is excepted from furlough because he or she is performing work that may continue to be performed during a lapse in appropriations—see Question B.1. explaining "excepted" employees) has determined, for example, that an investigation or the initiation of a personnel action is necessary to protect life and property, and must be undertaken prior to the enactment of appropriations, such an action could also fall within excepted activity. If this excepted activity triggers union representational rights under 5 U.S.C. chapter 71 (e.g., a formal discussion, a *Weingarten* interview, or the representation of an employee in connection with an adverse personnel action), a union's representational function would be required in order for the Agency to move forward with such an action and would, itself, in that narrow circumstance, constitute excepted activity. In such a case, therefore, official time should be granted to employees to serve in this representational function. With this in mind, agency officials should consult with Human Resources representatives and their legal counsel to evaluate whether contemplated management actions are necessary during the shutdown and whether they will trigger statutory representation rights.

5. **Will union officials have access to their union offices if they are in furlough status?**

   A. Generally, access to facilities during a furlough may be restricted based on funding, security, or other issues. Depending on agency operations, a particular facility, or portions of a facility, may be fully or partially operational.

   If a facility is operational and accessible, and a union official is either an exempt employee or is engaged in an excepted activity (in accordance with the requirements discussed in Question Q.4.), he or she would have access to the union office to engage in representational work in an official time capacity.

R. Reductions in Force

Reminder to agencies: Agencies are encouraged to prepare decisional documents to document and support RIF-related decision-making. OPM encourages agencies to consult with their legal staff regarding what documents are necessary and what information they should contain.

1. **What is the difference between a reduction in force (RIF) and a furlough?**

   A. A reduction in force is a process to separate or reassign employees when positions have been abolished. A furlough is the placing of an employee in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons.

2. **Can an agency run a RIF during a shutdown furlough? If so, can an agency issue RIF notices during the period of orderly shutdown before a shutdown furlough?**

   A. Yes, an agency can run a RIF and may issue RIF notices (prepared in accordance with the requirements in 5 CFR part 351, subpart H) when preparing for a shutdown furlough. OMB has determined that agencies are authorized to direct employees to perform work necessary to administer the RIF process during the lapse in appropriations as excepted activities.

3. **What happens if the RIF effective date occurs during a shutdown furlough?**

   A. The RIF notice period continues during a lapse in funding (i.e., the effective date of release occurs as planned). OMB has determined that agencies are authorized to direct employees to perform the work necessary to administer the RIF process during the lapse in appropriations as excepted activities.

4. **Is a furlough notice different than a RIF notice?**

   A. Yes, furlough notices and RIF notices require different information.

A furlough notice provides information about the reason for the furlough, information about appeal rights and a Form SF-8 (Notice to Federal Employee about Unemployment Insurance). This form provides information on filing unemployment compensation claims, including the agency's mailing address and Federal identification code. Employees may be asked to provide or refer to this form when they file a claim with their State unemployment insurance agency.
A RIF notice provides information about the RIF, how the employee is impacted, the benefits available to the employee and appeal rights. RIF notices must be created in accordance with 5 CFR 351 Subpart F. Sample templates for RIF notices are available on OPM's website at RIF Resources and Templates.

5. **Are there any additional notice requirements for RIFs of 50 or more employees in a competitive area?**

   A. Yes, when an agency separates 50 or more employees by RIF from a competitive area, the agency must provide additional notification in accordance with 5 CFR 351.803(b) and the Workforce Investment Act of 1998.

6. **Are there any restrictions on establishing or changing competitive area definitions?**

   A. Yes. An agency must establish competitive areas at least 90 days prior to the RIF effective date. Establishment or changes to competitive areas within 90 days of the RIF effective date must be approved by OPM. To request an exception to the 90-day competitive area requirement, please send a completed request template to the OPM Workforce Policy and Innovation's RIF Policy Advisory Team at WPIntake@opm.gov.

Sample Shutdown Furlough Decision Notice Due to a Lapse in Appropriations

[Ensure that an SF-8 is attached to this notice]

This notice would be used for a "shutdown" furlough, where the agency no longer has the necessary funds to operate and must curtail those activities not excepted by OMB standards. In such instances there is no advance written notice proposing the action (see 5 CFR 752.404(d) and 359.806(a)), although a written furlough decision notice should be given as soon as possible after the furlough starts.

NOTICE

In the absence of either a Fiscal Year (FY) [state year] appropriation, or a continuing resolution for [agency name], no further financial obligations may be incurred by [agency name], except for those related to the orderly suspension of [agency's name] operations or performance of excepted activities as defined in the Office of Management and Budget (OMB) memorandum for Heads of Executive Departments and Agencies dated November 17, 1981. Because your services are no longer needed for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective [enter date]. This furlough, i.e., nonduty, nonpay status, is an action of 30 days or less under 5 CFR part 752. Therefore, this furlough notice expires on [enter date]. You should monitor public broadcasts and the Internet. When a continuing resolution or an FY [state year] appropriation for [agency name] is approved, you will be expected to return to work on your next regular duty day.

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

If employees are being retained in your competitive level or competitive area, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonduty, nonpay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will

not be permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is canceled. After the lapse ends, you will receive your "standard rate of pay" for the furlough period in accordance with 31 U.S.C. 1341(c) as soon as possible. (This means that employees who would have been in pay status but for the lapse in appropriations will receive their full regular pay for any furlough period.)

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action at the following location: [identify location and times, as appropriate].

The process to exercise your appeal, grievance, and complaint rights are set forth below. Carefully read the explanations for how to exercise your options and the effects of an election as you may elect only **one** avenue for redress.

MSPB Appeal: If you have the right of appeal to MSPB and wish to appeal this action to MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice, whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at http://www.mspb.gov/appeals/appeals.htm. If you cannot access the internet, please notify [insert name and contact information] and a paper copy of MSPB's appeal form and regulations will be provided to you. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located

when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. You may wish to check MSPB's website for its operating status during this time. MSPB encourages employees to file electronically with MSPB's e-Appeal electronic filing system at https://e-appeal.mspb.gov/. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. MSPB requires that attorney representatives register as e-filers with MSPB and file all pleadings using MSPB's e-Appeal. If you submit an appeal to MSPB, the agency official to whom MSPB should send the Acknowledgment Order and copy of the appeal is [insert the official's name or title, physical mailing address, email address, telephone, and fax number].

Grievance Under Collective Bargaining Agreement: Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement [provide citation to negotiated agreement] or may appeal to MSPB in accordance with the procedures outlined above, but not both. An employee is deemed to have exercised an option when the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the negotiated grievance procedure, whichever event occurs first. Inquiries about pursuing the grievance process cannot alter the MSPB deadlines referenced above. However, the election of the negotiated grievance procedure will not prejudice the employee's right to request MSPB review of the final decision with respect to allegations of discrimination as defined in 5 U.S.C. 2302(b)(1). To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

Discrimination Complaint: If you believe this action involves discrimination based on race, color, religion, sex, national origin, handicapping condition, or age, you have the right to file a complaint under the provisions of 29 C.F.R. Part 1614. To do so, you must contact an Equal Employment Opportunity (EEO) counselor within forty-five (45) calendar days of your receipt of this letter. For further information or assistance, you may contact [insert name, address, e-mail address, and phone number of agency's EEO contact]. Use of the pre-complaint process described in 5 C.F.R. § 1614.105 does not constitute an election, but the filing of a complaint does.

Office of Special Counsel Complaint: You may file a prohibited personnel action complaint to seek corrective action through the Office of Special Counsel in accordance with subchapters II and III of 5 U.S.C. chapter 12. However, your appeal rights to MSPB will be limited to protected whistleblower disclosures under 5 U.S.C.

§ 2302(b)(8) or retaliation for engaging in certain protected activities under 5 U.S.C. § 2302(b)(9). Visit https://osc.gov/ for more information.

Attached is the SF-8, *Notice to Federal Employee about Unemployment Insurance*. Please be aware that you may be required to repay any unemployment insurance payments once an appropriations bill is enacted and you receive pay for the period of the furlough. Additional information about unemployment insurance is available at https://www.careeronestop.org/LocalHelp/service-locator.aspx.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

_____ _____

Deciding Official Date

I acknowledge receipt of this decision.

_____ _____

Employee's signature Date

Attachment: SF-8

Sample Notice of Furlough During Holiday to Excepted Employee Due to a Lapse in Appropriations

[Ensure that an SF-8 is attached to this notice]

In the absence of either a Fiscal Year (FY) [state year] appropriation, or a continuing resolution for [agency name], no new financial obligations may be incurred by the Agency for functions funded through annual appropriations, except with respect to certain personnel who are otherwise authorized to continue to work.

As you are aware, as an employee who has been excepted from furlough and continued to work during the shutdown, you are required to work on those days you would normally be scheduled to work. The upcoming [state holiday] on [state date], is not a day you would normally be scheduled to work, and we are not requiring you to work on that day. Because of the operation of the shutdown furlough rules, we must place you in a furlough status for the [state holiday] holiday. As an excepted employee, you are expected to return to work on your next regularly scheduled workday following the [state holiday] holiday. For the vast majority of you, this means you would return to work on [state date].

If you have a work schedule that does not include [state date], as a workday, you will follow the normal holiday rules for an "in lieu of" holiday. All full-time employees, including those on flexible or compressed work schedules, are entitled to an "in lieu of" holiday when a holiday falls on a non-workday. For example, if you have a Monday through Friday alternative work schedule (AWS), and [state holiday] is your regularly scheduled AWS day off, you will do as you have generally done for previous holidays and take your "in lieu of" holiday the work day immediately preceding Monday. For example, if the holiday is Monday, [insert date], your "in lieu of" holiday would be Friday, [insert date]. You would be in furlough status on Friday instead of Monday in this example. You would return to work on Tuesday, [insert date], because your regular day off is on Monday, [insert date].

This can be a bit confusing, so if you do not fall in the category above of working a Monday through Friday schedule and/or are unclear of when your "in-lieu of" holiday is to occur, please consult with your supervisor. In the event your supervisor is unavailable, please call or email [state agency] Human Resources.

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary

30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

If employees are being retained in your competitive level or competitive area, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonduty, nonpay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will not be permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is canceled. After the lapse ends, you will receive your "standard rate of pay" for the furlough period in accordance with 31 U.S.C. 1341(c) as soon as possible. (This means that employees who would have been in pay status but for the lapse in appropriations will receive their full regular pay for any furlough period.)

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action at the following location: [identify location and times, as appropriate].

The process to exercise your appeal, grievance, and complaint rights are set forth below. Carefully read the explanations for how to exercise your options and the effects of an election as you may elect only **one** avenue for redress.

MSPB Appeal: If you have the right of appeal to MSPB and wish to appeal this action to MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice, whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at http://www.mspb.gov/appeals/appeals.htm. If you cannot access the internet, please notify [insert name and contact information] and a paper copy of MSPB's appeal form and regulations will be provided to you. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. You may wish to check MSPB's website for its operating status during this time. MSPB encourages employees to file electronically with MSPB's e-Appeal electronic filing system at https://e-appeal.mspb.gov/. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. MSPB requires that attorney representatives register as e-filers with MSPB and file all pleadings using MSPB's e-Appeal. If you submit an appeal to MSPB, the agency official to whom MSPB should send the Acknowledgment Order and copy of the appeal is [insert the official's name or title, physical mailing address, email address, telephone, and fax number].

Grievance Under Collective Bargaining Agreement: Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement [provide citation to negotiated agreement] or may appeal to MSPB in accordance with the procedures outlined above, but not both. An employee is deemed to have exercised an option when the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the negotiated grievance procedure, whichever event occurs first. Inquiries about pursuing the grievance process cannot alter the MSPB deadlines referenced above. However, the election of the negotiated grievance procedure will not prejudice the employee's right to request MSPB review of the final decision with respect to allegations of discrimination as defined in 5 U.S.C. 2302(b)(1). To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

Discrimination Complaint: If you believe this action involves discrimination based on race, color, religion, sex, national origin, handicapping condition, or age, you have the right to file a complaint under the provisions of 29 C.F.R. Part 1614. To do so, you must

contact an Equal Employment Opportunity (EEO) counselor within forty-five (45) calendar days of your receipt of this letter. For further information or assistance, you may contact [insert name, address, e-mail address, and phone number of agency's EEO contact]. Use of the pre-complaint process described in 5 C.F.R. § 1614.105 does not constitute an election, but the filing of a complaint does.

Office of Special Counsel Complaint: You may file a prohibited personnel action complaint to seek corrective action through the Office of Special Counsel in accordance with subchapters II and III of 5 U.S.C. chapter 12. However, your appeal rights to MSPB will be limited to protected whistleblower disclosures under 5 U.S.C. § 2302(b)(8) or retaliation for engaging in certain protected activities under 5 U.S.C. § 2302(b)(9). Visit https://osc.gov/ for more information.

Attached is the SF-8, *Notice to Federal Employee about Unemployment Insurance*. Please be aware that you may be required to repay any unemployment insurance payments once an appropriations bill is enacted and you receive pay for the period of the furlough. Additional information about unemployment insurance is available at https://www.careeronestop.org/LocalHelp/service-locator.aspx.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

_____ _____

Deciding Official Date

I acknowledge receipt of this decision.

_____ _____

Employee's signature Date

Attachment: SF-8

Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee Due to a Lapse in Appropriations

[Ensure that an SF-8 is attached to this notice]

In the absence of either a Fiscal Year (FY) [state year] appropriation, or a continuing resolution for [agency name], no new financial obligations may be incurred by the Agency for functions funded through annual appropriations, except with respect to certain personnel who are otherwise authorized to continue to work.

As you are aware, as an employee who has been excepted from furlough and continued to work during the shutdown, you are required to work on those days you would normally be scheduled to work. Because of the operation of the shutdown furlough rules, however, we must place you in a furlough status for the following dates: [state applicable date(s)]. As an excepted employee, you are expected to return to work on your next regularly scheduled workday following [state date]. This means you would return to work on [state date].

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

If employees are being retained in your competitive level or competitive area, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonduty, nonpay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will not be permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is canceled. After the lapse ends, you will receive your "standard rate of pay" for the furlough period in accordance with 31 U.S.C. 1341(c) as soon as possible. (This means that employees who would have been in pay status but for the lapse in appropriations will receive their full regular pay for any furlough period.)

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action at the following location: [identify location and times, as appropriate].

The process to exercise your appeal, grievance, and complaint rights are set forth below. Carefully read the explanations for how to exercise your options and the effects of an election as you may elect only **one** avenue for redress.

MSPB Appeal: If you have the right of appeal to MSPB and wish to appeal this action to MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice, whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at http://www.mspb.gov/appeals/appeals.htm. If you cannot access the internet, please notify [insert name and contact information] and a paper copy of MSPB's appeal form and regulations will be provided to you. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. You may wish to check MSPB's website for its operating status during this time. MSPB encourages employees to file electronically with MSPB's e-Appeal electronic filing system at https://e-appeal.mspb.gov/. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. MSPB requires that attorney representatives register as e-filers with MSPB and file all pleadings using MSPB's

e-Appeal. If you submit an appeal to MSPB, the agency official to whom MSPB should send the Acknowledgment Order and copy of the appeal is [insert the official's name or title, physical mailing address, email address, telephone, and fax number].

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https://www.careeronestop.org/LocalHelp/service-locator.aspx.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

_____ _____

Deciding Official Date

I acknowledge receipt of this decision.

_____ _____

Employee's signature Date

Attachment: SF-8

Table of Recent Changes

(Changes made on September 28, 2025)

Question	Change	Description
A.3	New	Use of Government equipment in a shutdown furlough
P.6.b.	New	Probationary and trial period certifications and petitions
P.6.c.	New	Certifications, terminations, and petitions under 5 CFR 11.5
R.1 – R.6	New	Reductions in force

(Changes made by Addendum dated January 29, 2024)

Question	Change	Description
D.4a	New	Intermittent employees and retroactive pay
D.6	Revised	Order of precedence for deductions when pay is insufficient to cover all deductions
D.7	New	Amount of deductions taken from an employee's partial paycheck
D.8	New	Effect on insurance and flexible spending account enrollment and coverage
D.9	New	Changes to allotments previously designated by the employee
D.10	New	Amount of deductions taken for allotments
D.11	New	Effect on deductions for court-ordered garnishments
F.6	Revised	Previously scheduled FMLA leave and 12-week entitlement
F.7	Revised	Employee scheduled to take paid leave under FMLA
F.21	New	Employee scheduled to take paid parental leave in substitution for unpaid FMLA leave
F.22	New	Furlough time and FMLA service time eligibility requirement

F.23	New	Furlough time and required weeks of work for purposes of paid parental leave
F.24	New	Effect on 12-month period following the birth or placement of a child for paid parental leave
F.25	New	Effect on 12-month eligibility period for disabled veteran leave
F.26	New	Advanced scheduling of annual leave for annual leave restoration purposes
I.1	Revised	Unemployment compensation
I.2	Revised	TSP loans during furlough
I.2a	New	TSP information

Question	**Change**	**Description**
M.2	Revised	Making updates or changes to retirement benefits
M.3	Revised	Reporting the death of a family member
M.4	Revised	Retirement applications
M.6	Revised	Submitting court order that awards a retirement benefit
Note to Section O	Revised	Federal workers' compensation benefits
Sample Notice	Revised	Notice of furlough
Sample Notice	Revised	Notice of furlough during holiday for excepted employee
Sample Notice	Revised	Notice of furlough during intermittent absences and holidays for excepted employee

Note: This table of changes does not include minor language revisions, editorial corrections, and URL revisions.

U.S. Office of Personnel Management

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